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MONTANA LEGISLATIVE HISTORY

Chapter 311 ~~19~~2001

Bill H _____ S 116 Original bill & history ✓C

H. Committee on Human Services		S. Committee on Public H W & S	
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Date Out 3/23	✓C	2/13	✓

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report _____

SENATE BILL NO. 116

INTRODUCED BY E. STONINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING DEFINITIONS; PROVIDING THAT THE MONTANA RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO ABUSED AND NEGLECTED YOUTH; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-106, 41-3-201, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-411, 41-3-412, 41-3-413, 41-3-420, 41-3-604, 41-3-1102, 41-3-1103, 41-3-1115, 41-3-1142, 42-3-202, 42-3-301, 42-4-112, 42-5-101, 42-5-103, 42-8-101, 42-8-103, 42-8-104, AND 42-8-107, MCA; AND REPEALING SECTIONS 41-3-1014, 41-3-1104, AND 41-3-1114, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible;

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; and

(f) recognize that a child is entitled to assert the child's constitutional rights.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

(c) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing ~~the policy of~~ this ~~section~~ chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child ~~and when the home is approved by the department, place the child~~, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a ~~home~~ placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

~~(c)~~(b) an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~(c) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare; or

(ii) substantial risk of harm to a child's health or welfare.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

~~(8)~~(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(9)~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

~~(10)~~(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(11)~~(13) "Parent" means a biological or adoptive parent or stepparent.

~~(12)~~(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(13)~~(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or

function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

~~(14)~~(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

~~(15)~~(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(16)~~(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(17)~~(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(18)~~(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(19)~~(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Substantiated child abuse or neglect" means that an investigating person has determined after an investigation that the facts showing that child abuse or neglect occurred are more convincing than the facts offered to show that child abuse or neglect did not occur.

~~(20)~~(25) "Treatment plan" means a written agreement between the department and the parent or

guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(21)~~(26) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(22)~~(27) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~ (27), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(23)~~(28) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, ~~or~~ neglected, or abandoned."

Section 3. Section 41-3-106, MCA, is amended to read:

"41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it ~~shall be~~ is the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) The filing of a criminal charge does not toll a proceeding under this chapter.

~~(2)~~(3) ~~District~~ The district court ~~shall have~~ has original jurisdiction under this section."

Section 4. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science ~~practitioner~~ practitioners and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy; ~~or~~

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A ~~clergyperson~~ member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the ~~clergyperson~~ member of the clergy or priest in that person's capacity as a ~~clergyperson~~ member of the clergy or priest;

(ii) the statement was intended to be a part of a confidential communication between the ~~clergyperson~~ member of the clergy or priest and a member of the ~~clergyperson's or priest's~~ church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the ~~clergyperson~~ member of the clergy or priest.

(c) A ~~clergyperson~~ member of the clergy or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 5. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an

issue before it.

(3) Records, including case notes, correspondence, evaluations of a child, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a

family group conference for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records, ~~or~~ records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(7) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions under this chapter. The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this ~~part~~ chapter. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth

named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(8) ~~Except when the proceeding is instituted or commenced at the request of the department, a citation must be issued and served upon a representative of the department before the court hearing.~~

~~(9)~~ The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

~~(10)~~(9) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) appointment of a guardian pursuant to 41-3-421;

(d) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; or

(ii) appointment of a guardian; or

(e) any combination of the provisions of subsections ~~(10)(a)~~ (9)(a) through ~~(10)(d)~~ (9)(d) or any other relief that may be required for the best interests of the child.

~~(11)~~(10) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection ~~(10)~~ (9) of this section.

~~(12)~~(11) The petition may be modified for different relief at any time within the discretion of the court.

~~(13)~~(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 7. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by ~~the county attorney, the attorney general, or an attorney hired by the county or must be supported by a~~ a representative of the department ~~report~~ stating in detail the facts upon which the request is based. The petition~~,~~ or affidavit~~, or report~~ of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. Except as provided in 41-3-403, the parents must be given an opportunity to address the court before the court rules on the petition."

Section 8. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of ~~youth~~ child.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the ~~youth~~ child.

(b) The order, along with the petition and supporting documents, must be served pursuant to the Montana Rules of Civil Procedure on the person or persons named in the order. When the ~~youth~~ child is

placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the ~~youth~~ child, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the ~~rules of civil procedure~~ Montana Rules of Evidence as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. ~~Except as otherwise provided in this part, the rules of civil procedure apply.~~ Hearsay evidence of statements made by the affected ~~youth~~ child is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the ~~youth~~ child with the department until further order.

(2) At the conclusion of a show cause hearing, in an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to prevent the child's removal from the home or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(6) The court may grant ~~the following kinds of relief~~ relief under this section, which does not

constitute a court-ordered treatment plan under 41-3-420. The relief may include but is not limited to:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the ~~youth~~ child or parents, guardians, or person having physical or legal custody;

(c) requirement that the ~~youth~~ child, parents, guardians, or person having physical or legal custody receive counseling services;

(d) ~~placement of~~ right to place the ~~youth~~ child in ~~a~~ temporary medical ~~facility or a facility for protection of the youth~~ or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate;

(f) requirement that the perpetrator of the alleged child abuse or neglect be removed from the familial home to allow the child to remain in the home;

(g) requirement that a parent provide the department with the name and address of the other parent, unless the other parent's parental rights to the child have been terminated;

(h) requirement that a parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding;

~~(f)~~(i) inquiry into the financial ability of the parents, guardian, or other person having custody of the ~~youth~~ child to contribute to the costs for the care, custody, and treatment of the ~~youth~~ child and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; or

~~(g)~~(j) other temporary disposition that may be required in the best interests of the ~~youth~~ child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(7) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing ~~and must be limited to one extension of 90 days~~. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

(8) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (7).

(9) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 9. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth. Hearsay evidence of statements made by the youth is admissible at the hearing if offered by a department social worker or a professional qualified as an expert by the court.

(3) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(6)."

Section 10. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing -- temporary legal custody.** (1) If a ~~youth~~ child is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the ~~youth~~ child:

(a) permit the ~~youth~~ child to remain with the ~~youth's~~ child's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a ~~youth~~ child who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the ~~youth~~ child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the ~~youth~~ child;

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department ~~is notified and a court hearing is set in a timely manner on the proposed expenditure~~ consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) dismissing the petition would create a substantial risk of harm to the child or detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-403, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(3) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent

with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or (3), a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed a total of 6 months, upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) long-term custody pursuant to 41-3-412;

(d) appointment of a guardian pursuant to 41-3-421; or

(e) dismissal.

(6) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (5).

(7) If an extension of temporary legal custody is granted to the department under subsection (5)(a), the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and must specifically find that an extension is in the child's best interests.

(8) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 11. Section 41-3-411, MCA, is amended to read:

"**41-3-411. Contributions by parents or guardians for youth's care.** (1) If physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 12. Section 41-3-412, MCA, is amended to read:

"**41-3-412. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first, unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental~~,~~ and physical~~, and psychological~~ health; and

(d) plan for permanency for the child, including specific times for achieving the plan.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall order the department to take whatever steps are necessary to effectuate the terms of the plan, including returning the child safely to the child's home, and shall order the county attorney, the attorney general, or an attorney hired by the county to file any necessary petition to implement the plan with the court within 30 days after the present hearing unless a petition has already been filed.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the provisions in subsection (6) and that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family,

insurance, and other resources have been examined.

(6) If the permanency plan hearing results in a finding that reunification of the child with the child's parent or guardian is not in the best interests of the child, a subsequent petition filed must be one of the following:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met;

(b) appointment of a guardian pursuant to 41-3-421; or

(c) ~~long-term custody~~ a planned permanent living arrangement ~~of~~ for a child if the evidence demonstrates by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

~~(i)~~(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

~~(ii)~~(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

~~(iii)~~(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

~~(iv)~~(v) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(c)(v)(A) through (6)(c)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in ~~long-term foster care~~ a planned permanent living arrangement; or

~~(v)~~(vi) the child ~~is at least 12 years of age and~~ meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) a judicial finding has been made that other more permanent options are not appropriate or are not in the best interests of the child;

~~(C)~~(D) termination of parental rights to the child is not in the child's best interests; and

~~(D)~~(E) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that

placement.

(7) The court may terminate ~~long-term custody~~ a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 13. Section 41-3-413, MCA, is amended to read:

"**41-3-413. Review hearing.** Within 12 months of a finding that reunification is not in the best interests of the child and every 12 months thereafter until the permanent placement of the child is finalized, the court shall make additional findings regarding the department's reasonable efforts to make and finalize a permanent placement for the child."

Section 14. Section 41-3-420, MCA, is amended to read:

"**41-3-420. Treatment plan -- contents -- changes.** (1) ~~Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the~~ The court may order a treatment plan if:

(a) the parents admit the allegations of an abuse and neglect petition or make stipulations pursuant to [section 31]; or

(b) the court has made an adjudication under 41-3-404 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or

psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court."

Section 15. Section 41-3-604, MCA, is amended to read:

"**41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-403, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-406, a petition for a planned permanent living arrangement pursuant to 41-3-412, or a petition to dismiss must be filed."

Section 16. Section 41-3-1102, MCA, is amended to read:

"**41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(6) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(7) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth

who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

(8) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(8)~~(9) "Youth assessment center" has the meaning provided in 41-5-103.

~~(9)~~(10) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, child-care agencies, transitional living programs, and youth assessment centers.

~~(10)~~(11) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(11)~~(12) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 17. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and ~~youth assessment centers~~ transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation~~, and treatment~~ in youth foster care homes and youth group homes for ~~youths committed to~~ youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a ~~child~~ youth placed in a youth foster home must be provided to the extent that the ~~child~~ youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-421 and in accordance with eligibility criteria established by department rule."

Section 18. Section 41-3-1115, MCA, is amended to read:

"41-3-1115. Foster care review committee. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the ~~youth~~ district court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without

compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with ~~federal law and may not be later than the 12-month anniversary date of the child's placement into foster care~~ the Adoption and Safe Families Act of 1997, as enacted.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court."

Section 19. Section 41-3-1142, MCA, is amended to read:

"41-3-1142. Issuance of license -- authority of issuing agency -- rules. (1) The department may issue licenses to persons operating youth care facilities or grant approval of kinship or extended family care

providers and prescribe the conditions upon which licenses and approvals may be issued. The department may make rules necessary for the licensure or approval, operation, and regulation of those facilities consistent with the welfare of the residents.

(2) The department may inspect all licensed facilities or approved homes and, as appropriate, undertake action, including but not limited to the revocation of licenses and approvals.

(3) The person providing care in the facilities or homes shall give the department any information that may be required and afford the department every reasonable opportunity for observing the operation of the facilities or homes.

(4) The department shall require an applicant for a youth foster home license to submit to a criminal and child protection background check, which must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children. The department shall request information from in-state and out-of-state agencies as appropriate."

Section 20. Section 42-3-202, MCA, is amended to read:

"**42-3-202. Initiation of preplacement evaluation -- who conducts evaluation -- payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process by:

(a) establishing a client relationship with the department or a licensed child-placing agency; or

(b) requesting a preplacement evaluation from ~~either~~ the department, a licensed social worker, or a licensed child-placing agency.

(2) ~~The department may contract with a licensed social worker or a licensed child-placing agency to conduct the evaluation.~~ In a direct parental placement adoption, the preplacement evaluation must be conducted by either a licensed social worker or a licensed child-placing agency.

(3) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the ~~department's or licensed child-placing agency's standards for placement of a child~~ provisions of this part.

(4) A department or agency from which an individual is seeking to adopt a child may require the individual to be evaluated by its own qualified employee or independent contractor even if the individual has received a favorable preplacement evaluation from another evaluator.

(5) Fees for the study and report are set by the entity completing them and must be paid for by the prospective adoptive parent."

Section 21. Section 42-3-301, MCA, is amended to read:

"**42-3-301. Requirement for preplacement evaluation.** (1) Before the department or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated as provided in ~~42-3-202~~ part 2 of this chapter.

(2) The department or agency shall prepare a written report containing the results of its evaluation."

Section 22. Section 42-4-112, MCA, is amended to read:

"**42-4-112. Period for postplacement supervision.** (1) In a direct parental placement adoption, the court shall maintain jurisdiction over the placement during a postplacement evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

(2) The postplacement evaluation period must be supervised and evaluated by a licensed social worker or other qualified person appointed, contracted with, or employed by:

(a) the department, if the department has accepted supervision of the placement; or

(b) a licensed child-placing agency.

(3) The court shall provide the evaluator with copies of the petition for adoption and the items filed with the petition.

(4) A decree of adoption may not be entered for at least 6 months from the date an order is entered granting temporary custody during the pendency of the proceedings."

Section 23. Section 42-5-101, MCA, is amended to read:

"**42-5-101. Petition for adoption.** (1) A petition for adoption must be ~~notarized by the petitioners~~ verified and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency that placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by the petitioners to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by 42-2-301;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; ~~or~~

(b) the parent placing the child for adoption in a direct parental placement adoption; or

(c) the child's guardian ad litem if the child has one.

(4) Proceedings initiated under this part are subject to the Montana Rules of Civil Procedure except as modified by this part."

Section 24. Section 42-5-103, MCA, is amended to read:

"**42-5-103. Notice of hearing.** (1) Upon the filing of a petition for adoption, notice of hearing must be served on:

(a) a person whose consent to adoption is required under 42-2-301;

(b) the department or agency whose consent to adoption is required;

(c) the spouse of the petitioner if the spouse has not joined in the petition;

(d) a person who has revoked a consent or relinquishment or is attempting to have a consent or relinquishment set aside; ~~and~~

(e) the child's guardian ad litem if the child has one; and

~~(e)~~(f) any other person named by the court to receive notice.

(2) The notice must direct the person to appear in court at the time specified and to show cause why the petition should not be granted.

~~(3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil Procedure.~~

~~(4)~~(3) A notice of hearing is not required to be served on any party:

(a) whose parental rights have been terminated in prior proceedings;

(b) who waives notice in a relinquishment, consent, or other document signed by the party;

(c) who has consented in writing to an adoption; or

(d) whose consent to adoption is not required under 42-2-302."

Section 25. Section 42-8-101, MCA, is amended to read:

"42-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Placement activities" means any of the following:

(a) placement of a child for adoption or foster care;

(b) arranging or providing short-term foster care for a child pending an adoptive placement; or

(c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective adoptive or foster parents.

(3) "Soliciting" means to request, offer, promote, or refer, ~~or entice,~~ either directly or indirectly through correspondence, advertising, or other method, a potential adoptive or foster parent or couple, birth parent or parents, or placement of a child by a birth parent."

Section 26. Section 42-8-103, MCA, is amended to read:

"42-8-103. License required -- term of license -- no fee charged. (1) Only an entity holding a

current child-placing agency license issued by the department may act as an agency for the purpose of:

(a) procuring or selecting proposed adoptive or foster homes;

(b) placing children in proposed adoptive or foster homes;

(c) soliciting persons to adopt or foster children or arranging for persons to adopt or foster children;

(d) soliciting persons to relinquish children or place children in potential adoptive or foster homes; or

(e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license."

Section 27. Section 42-8-104, MCA, is amended to read:

"**42-8-104. Requirements for licensure.** The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) ~~Complete~~ The agency shall maintain complete records ~~must be kept of both~~ of the children and ~~adopting~~ adoptive or foster parents with which the agency deals~~, and the~~. Adoption records must be maintained in accordance with 42-6-101.

(6) The agency shall maintain and use an in-state office for making a social study of the child ~~and proposed adoptive parent before placement of the child~~, particularly with regard to~~:~~

~~(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and~~

~~(b)~~ the physical and mental condition of the child and the child's family background.

(7) The agency shall maintain and use an in-state office for conducting a preplacement evaluation for adoptive parents or a home study for foster parents, particularly with regard to the physical and mental health, emotional stability, and personal integrity of the adoptive or foster parents and their ability to promote the child's welfare.

~~(7)~~(8) The agency must have the ability to provide education for adoptive or foster parents and

counseling for placing parents as required in 42-2-409 and department rules.

~~(8)~~(9) The agency shall agree to cooperate with courts having jurisdiction in adoptive or foster care matters and with other public agencies having to deal with the welfare of children.

~~(9)~~(10) The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year."

Section 28. Section 42-8-107, MCA, is amended to read:

"**42-8-107. Investigation of agencies -- cancellation of licenses.** (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by 42-8-104~~(9)~~(10) or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency."

NEW SECTION. **Section 29. Limitation on placement.** Except as provided in 41-3-301(1), the department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

NEW SECTION. **Section 30. Rulemaking authority.** The department shall adopt rules necessary to carry out the purposes of this chapter.

NEW SECTION. **Section 31. Stipulations.** (1) Subject to approval by the court, a parent may stipulate:

(a) a judicial finding that the parent has abused or neglected a child;

(b) a judicial finding that the child is a youth in need of care;

(c) a dispositional order.

(2) A stipulation must be in writing and must be approved by the court. The court may approve a stipulation if it determines that the parties understand the content and consequences of the stipulation.

(3) A stipulation may be made at any time after a parent first appears before the court and before adjudication by the court. A stipulated adjudication must contain findings of fact that accurately describe the abuse or neglect. The court may not approve stipulated adjudicatory findings that do not accurately describe the reasons for state intervention.

(4) A stipulation to a dispositional order must address the facts supporting child placement, care, treatment decisions, and further actions and progress expected of the parties and must comply with the findings of fact and conclusions of law required for dispositions under 41-3-406 that are contested.

NEW SECTION. **Section 32. Repealer.** Sections 41-3-1014, 41-3-1104, and 41-3-1114, MCA, are repealed.

NEW SECTION. **Section 33. Codification instruction.** [Sections 29 through 31] are intended to be codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 29 through 31].

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on January 17, 2001 at 3 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 116, 1/11/2001; SB 107, 1/11/2001
Executive Action:

HEARING ON SB 116

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman

Proponents: Chuck Hunter, Department of Public Health and Family Services (DPHHS)

Ann Gilroy, Court Assessment
Ann Lynch, Montana Childcare Association
Barbara Mahugh, Montana R & R Network
REP. JEFF MANGAN, HD 45, GREAT FALLS
John W. Larson, District Court

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman introduced SB 116. The bill was requested by the Child Protective Services Division (CPS) and deals with a variety of topics that deal with child welfare. It will revise the laws relating to child abuse and neglect, youth in need of care, adoption and foster children; revising provisions relating to placement and disposition of abused and neglected youth. It affects Title 41, which is child abuse and neglect and Title 42, which is adoption in Montana statute. These are very difficult, emotional and traumatic circumstances that these statutes deal with. Our public agencies are stretched very thin and we have been asking these agencies to do more with less, and we cannot continue to do that. In section 2, we are removing child care providers from the list of persons responsible for the child's care. This bill is saying CPS will no longer go into commercial daycare centers and investigate child abuse. This responsibility will be transferred to the licensing bureau of daycare centers and if that is inadequate, law enforcement will take over. Next, it will deal with the distinction between the courts' authority; and the department's authority in these cases, by preventing the court ordering the treatment of the child. Presently, the court can order treatment and it is up to the department to pay, even if they do not have the money in their budget. The next part deals with adoption by saying the department will make the decision about the child's adoption; not the court. Finally, the fourth part is coming in the form of an amendment, stating, when child abuse is reported the department shall assess the information contained in the report and make a determination regarding the level of response required and the time frame with which action must be initiated. Presently, CPS is required by law to investigate every report. These are some tough changes to make.

{Tape : 1; Side : A; Approx. Time Counter : 0.9 - 6.7}

Proponents' Testimony:

Chuck Hunter, DPHHS, Child Protective Services Division, passed out a section by section synopsis of SB 166 **EXHIBIT(phs13a01)**.

{Tape : 1; Side : A; Approx. Time Counter : 6.7 - 27.3}
{Tape : 1; Side : B; Approx. Time Counter : 0.0 - 5.4}

Mr. Hunter said there is a clause in Section 19, lines 10-13, when licensing foster families, they are required to do a Child Protective Services check and a criminal background check. The Department of Justice now is questioning the wording and they have sent some suggested language over and he will look at that language when the committee does executive action.

Next, **Mr. Hunter** passed out an amendment to SB 166, **EXHIBIT(phs13a02)**.

Mr. Hunter has the number of investigations, number of workers, etc., and other data available for the committees questions.

Rep. Jeff Mangan, HD 45, Member of the Youth Justice Council of Crime Control, Member Childcare Advisory Board, said this is a good bill, but he has two concerns. The first is removing child care providers from the list of folks responsible for a child's care; but he is also concerned about licensing taking on the additional responsibility. Secondly, he feels they should not take away the discretion from the courts and judges. Other than that this looks like a good bill.

John W. Larson, District Judge in Missoula, is concerned about taking the court out of the process. SB 170 deals with the same topic and both committees - Senate Judiciary and Senate Public Health should work together. There are many legal issues and public health issues that need to be blended from both bills. Judge Larson passed out Resource Guidelines, Improving Court Practice in Child Abuse and & Neglect Cases **EXHIBIT(phs13a03)**. These guidelines were adopted in 1995. The reason judges got into this business is because Congress passed a law 20 years ago, PL 96-272, to speed up the system to get kids out of foster care. He finds it ironic the department wants the judges to deal with long term foster care and make decisions about placement, but doesn't trust the judges to take any role whatsoever in the final placement of these kids. Federal law requires reasonable efforts, but nowhere in Montana Law are reasonable efforts defined. He passed out some recommended approaches to reasonable efforts **EXHIBIT(phs13a04)**. This would be helpful to social workers, family members, and professionals to know what these reasonable efforts are. The requirements of the federal money (4E) are based on reasonable efforts. We need some flexibility to improve these programs and we need to work together.

{Tape : 1; Side : B; Approx. Time Counter : 5.4 - 26.9}

Judge Larson said there are a few technical changes with reference to medical records. The drug treatment regulations require disclosure of treatment records. He also said, we need to work on Mr. Hunter's concern about resources. In the past few sessions, the Legislature has expanded district court reimbursement programs. In summary, we need to focus on child protection, and we should attempt to address reasonable efforts.

Judge Larson said we need to focus on permanency for children **EXHIBIT(phs13a05)**, and we have to take the right approach for these kids, and let the Judiciary, who are also elected, and the responsible elected officials who are here; help make decisions and not delegate all the decisions to the bureaucrats who are here in Helena. Finally, **Judge Larson** felt it would be nice to have a computer system that would help all agencies see what is going on, by being able to share information with the various agencies.

Ann Gilkey, Court Assessment Program, has been an advocate for CPS for 13 years. She is in support of SB 166 with a few concerns. Her first concern is having CPS social workers not looking into child abuse allegations. She feels the licensing workers are not trained to investigate. Another area she is concerned about are the records and confidentiality of those records. She feels these records need to be protected and worries about giving them to more people. Finally, she is not sure about the changing of hearsay evidence, (currently it is allowed) and it would not be allowed under the changes and she feels that would be too limiting. Please take careful consideration of this bill.

Margie Mason, Montana Child Care Resources, approves of what CPS currently does, but she doesn't feel the licensing staff should become the investigators of child abuse and neglect. The licensing staff is far sparser and these people already have a vast area to cover. The trained staff is another issue, these people were hired for a specific area, not to do investigation for child abuse and neglect, which is a very sensitive area. Many times we look back over reports, and they help us track all incidents, and she feels there will not be a good reporting system.

Ann Lynch, President of Montana Childcare Association, said she would like to address the issue of children in child care and she feels that CPS should continue to investigate reports of child abuse and neglect. She said there is a big difference between licensing and checking out regulations; and in investigating child abuse.

Robert McLean, Lame Deer, passed out a handout **EXHIBIT(phs13a06)**, a poster of his missing grandchildren. He is in support of the bill, but he does have concerns. He is glad the bill has included the language of the noncustodial parent. However, the language should state it **must** include the noncustodial parent; and not state it may include the noncustodial parent. He disagrees with the removal of the judiciary branch and thinks it should be amended to increase the role of the judge. He also, felt this department does not adequately address the Indian Child Welfare Act. **Judge Barz, Billings,** ordered his grandchildren to be returned to their father from their mother, but this was not followed up on. The mother never returned the children and now she has taken these children out of the state. He said that is why we need to have judges involved so you can go back to the judges to get a new placement order. He said he realized the court makes the decision, based upon the evidence. **Mr. McLean** maintained we need to address these issues, so someone like himself has somewhere he can turn.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. CHRISTIAENS wondered if the licensing staff have adequate resources and time to do what they are asked to do. **Mr. Hunter** said the licensing staff is quite a bit smaller than his staff, and very clearly they don't have the resources to respond immediately. Therefore, his staff would probably be the first responder to any reports of abuse, but would not do an in depth investigation.

SEN. CHRISTIAENS said when he went through the bill looking specifically for the provisions of the Indian Welfare Act, it does not follow through in this bill. **Mr. Hunter** said it is incorporated in all of his department's policy manuals.

SEN. CHRISTIAENS asked about 4E money. **Mr. Hunter** said 4E money is federal money provided to support child in foster care and the activities that support those children.

The committee agreed they did not have time to get all the answers to the questions they wanted to ask. They would like to have Mr. Hunter, Ms. Gilkey and Judge Larson present when they take executive action.

{Tape : 2; Side : A; Approx. Time Counter : 0.7 - 26.4}

Closing by Sponsor:

SEN. STONINGTON closed by saying these are difficult policy decision lines that have to be made. She doesn't want to get confused with what the statutes already say; and what we are trying to do. She said **Judge Larson** was implying this bill is trying to take the courts out of the process and this is not true.

HEARING ON SB 107

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Leslie Garvin, Mental Disabilities Board of Visitors**
Donald Harr, Montana Psychiatric Association
Bob Ross, Billings Mental Health Center
Jani McCall, Deaconess Billings Clinic
SEN. MIGNON WATERMAN, SD 26, Helena
Jane Jelinski, Montana Association of Counties
Charlie McCarthy, Mental Health Association
Brian Cameron, League of Women Voters
Erin McGowan, Montana Sheriff's and Peace Officers Association
Bonnie Adee, Mental Health Ombudsman
Sandra Mihelish, National Association of Mental Illness of Montana
Bob Olsen, Montana Hospital Association
Sherry Meador, Court Assessment Program
SEN. BOB KEENAN, SD 38, Bigfork

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls introduced SB 107, which would allow teleconferencing mental health proceedings, and was requested by the Legislative Finance Committee. This bill would allow two-way conferencing at the discretion of the court. It would work with those individuals who are in crisis and are brought to jail after some kind of altercation. Next, they are hauled to Warm Springs, then they are taken back to the community of origin to undergo court proceedings. This causes distress on the individuals and also costs the counties a considerable amount of money. She also said since this would become a new law, we are still struggling to improve the language.

EXHIBIT NO. 1
DATE 1-17-01
SB 116

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

MARC RACICOT
GOVERNOR

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CHILD & FAMILY SERVICES DIVISION
PO BOX 8005
HELENA, MONTANA 59604-8005

For the Senate Public Health, Welfare and Safety Committee

Senate Bill No. 116
Introduced by E. Stonington

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING DEFINITIONS; PROVIDING THAT THE MONTANA RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO ABUSED AND NEGLECTED YOUTH AND CONTAINING A REPEALER

Section by Section Analysis of SB 116:

SB 116 contains the amendments the Division proposes for Title 41, Chapter 3, Child Abuse and Neglect, and Title 42, Adoption. Those amendments are:

TITLE 41, CHAPTER 3, CHILD ABUSE AND NEGLECT

Section 1. 41-3-101. Declaration of policy. This section clarifies that, when the department must remove a child from his/her home, the non-custodial parent should be considered as the first placement option when it is in the child's best interests. This amendment codifies division policy requiring social workers to consider the noncustodial parent as the first placement option, absent good cause to the contrary, for a child when the child must be removed from the custodial parent because of child abuse/neglect.

Section 2. 41-3-102. Definitions. This section amends existing definitions and adds new terms to the definition section as follows:

a) Remove child care providers from the list of persons responsible for a child's care. The division must investigate suspected abuse/neglect if the alleged perpetrator is a "a person responsible for the child's welfare". The definition currently includes child care providers as "a person responsible for the child's welfare". The division proposes this amendment to clarify that social workers investigate child abuse in *residential* settings and that child abuse/neglect in a child care setting is a licensing issue.

b) Add the following definitions:

Concurrent planning means to work toward reunification of the child with the family while, at the same time, developing and implementing an alternative permanent plan. This definition reflects the reference to concurrent placement in current statute (which is

also clarified in this bill) and the reference in the Adoption and Safe Families Act of 1997 (ASFA). Adding a definition of concurrent planning also reflects current practice in that, because of the time frames, social workers must be working on reuniting the family and developing an alternative plan at the same time.

Family group conference means a meeting which involves family members in either developing treatment plans or making placement decisions or both. Under the confidentiality statute, a social worker may disclose case information during a family group conference. The term needs to be defined to clarify the entity to which social workers may disclose information and to put families on notice that the division will be convening and conducting family group conferences to assist in planning for the child.

Permanent placement means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches the age of 18. This definition mirrors the definition contained in the federal Adoption and Safe Families Act of 1997 and informs parents of Montana's definition of a permanent placement.

Physical neglect means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, appropriate clothing related to weather conditions or failure to provide cleanliness and general supervision or both. This definition is "housekeeping" in that social workers investigate and substantiate the occurrence of physical neglect but the statute contains no definition of the term.

Substantiated child abuse or neglect means upon investigation, the investigating person has determined that the facts showing that child abuse or neglect occurred are more convincing than the facts offered to show the child abuse or neglect did not occur. This definition is necessary because most social worker action is based on substantiating child abuse/neglect. Because substantiation of abuse/neglect is so integral to child protective services, the term should be statutorily defined.

c) Add "abandoned" to the definition of "youth in need of care" to reflect current practice and to remedy an existing oversight in the statute.

Section 3. 41-3-106. Prosecution of offenders. This section clarifies that the filing of criminal charges does not toll proceedings under the abuse/neglect statute. Currently some county attorneys will not proceed with the child abuse/neglect proceeding if criminal charges are pending. When this occurs, children remain in foster care longer than necessary.

Section 4. 41-3-201. Reports. This section adds employees of entities that contract with the department to provide direct services to children to the list of mandatory reporters. The division contracts with in-home services providers who are in a position to identify suspected abuse and neglect. Frequently these providers are reluctant to report suspected abuse and neglect because of concerns that reporting the alleged maltreatment will impact the relationship between the provider and the family. The division would like these providers added to the list of mandatory reporters to clarify that they must report suspected child abuse/neglect. Also, the position of the division is that providers of services funded by the division should be required to report suspected child abuse/neglect.

Section 5. 41-3-205. Confidentiality - disclosure exceptions. This section amends the confidentiality statute as follows:

a) Clarify that the evaluations considered CPS records are the child's evaluations. In 1999, the confidentiality statute was amended to list documents, including evaluations, which comprise the division's records. The broad category of evaluations resulted in confusion regarding the appropriate disclosure of parental evaluation reports created by other professionals. By amending the statute to clarify that only evaluations of the child who is the subject of the proceedings are part of the official record of the department, requests for release of parental evaluations can be referred back to the professional who produced the document.

b) Allow release of information to members of Congress and state legislators. This amendment will allow the division to respond to requests from members of Congress and state legislators regarding the division's response on those cases.

c) Clarify that the department cannot release medical records if they are covered by state or federal disclosure limitations. Federal and state statute or regulation govern, at a minimum, release of medical records, drug/alcohol evaluations, and information regarding receipt of drug/alcohol services. This amendment clarifies that the division cannot release records if the release is restricted by federal or state statute or regulation.

Section 6. 41-3-401. Abuse and neglect petitions. This section contains "housekeeping" amendments which clarify that, except where otherwise provided, the Rules of Civil Procedure and the Rules of Evidence apply. The amendment also removes the reference to issuance of citation (archaic language).

Section 7. 41-3-402. Petition for temporary investigative authority and protective services. This section contains "housekeeping" amendments to clarify that the affidavit required under this part should be signed by the department, not the attorney handling the case. This amendment also removes reference to "report" for consistency with other provisions which require an affidavit, not a report.

Section 8. 41-3-403. Order for immediate protection of youth. This section contains a "housekeeping" amendment which replaces "Rules of Civil Procedure" with "Rules of Evidence" to reference the correct rules. This section also contains the following amendments:

a) Clarify that the relief granted under a TIA does not constitute a court-approved treatment plan. Title 41, Chapter 3, contains a provision which allows the court to approve a treatment plan under specific circumstances (which are amended under this legislation). The reliefs granted under a temporary investigative authority do not meet the statutory requirements of a treatment plan; however, some courts confuse these reliefs with a treatment plan to be approved by the court. This confusion should be corrected by amending the statute to clarify the TIA relief is not a court-approved treatment plan.

b) Clarify that, under an order for immediate protection, the court may grant the department the right to place the child in temporary medical or out-of-home care, including, but not limited to care provided by a noncustodial parent, kinship or foster family, group home or institution. This amendment reflects practice in that the first placement options considered by the social worker are either the noncustodial parent or extended family.

c) Add to the list of relief the court may grant under a TIA the requirement that the perpetrator leave the home, not the child. This would prevent the out-of-home placement of the child by leaving the child with the non-offending parent if the non-offending parent can protect the child from the offending parent.

d) Add to the list of relief the court may grant under a TIA the requirement that the parent provide the name and address of the non-custodial parent and that the parent(s) provide names and addresses of extended family members who may be considered as placement options for the child. This reflects current practice and will require that the parent(s) assist the social worker in locating the noncustodial parent and appropriate extended family members if the child must be placed in out-of-home care.

e) Add a sentence to the end of (5) to specify that the department may use concurrent planning. This amendment provides specific statutory authority to the division to develop an alternate permanent placement for the child at the same the department is providing reunification services in case reunification services are not successful. Concurrent planning should reduce the length of time the child is in foster care if the child cannot be reunited with his/her parents.

f) Limit the TIA to 90 days with no extensions. This amendment will result in children achieving permanency more quickly.

Section 9. 41-3-404. Adjudicatory hearing - temporary disposition. This section provides that hearsay evidence of statements made by the child are admissible during the hearing if offered by a department social worker or a professional deemed expert by the court. Under current statute, hearsay evidence of statements made by the child are admissible during the show cause hearing for a TIA. This amendment would expand this hearsay exception to the adjudicatory hearing. The division has advised social workers and is working with county attorneys to by-pass the TIA and file for temporary legal custody in the initial petition if the evidence supports the action. Under current statute, if the first hearing held on the petition is an adjudicatory hearing, hearsay statements by the child are not admissible. This amendment would protect children from testifying in court against their parents by allowing either the social worker or another professional to testify regarding statements made by the child regarding the abuse/neglect.

Section 10. 41-3-406. Dispositional hearing - temporary legal custody. This section prevents the court from ordering care and treatment of a child which will require expenditure of funds unless the department consents and informs the court that the resources are available. This limitation on the courts is necessary because some courts order the department to pay for specific treatment without notice to the division or providing the division the opportunity to object prior to issuance of the order.

This section also requires a specific finding that the extension is in the best interests of the child if the court allows temporary legal custody to be extended more than 6 months. Current statute appears to limit the extension of temporary legal custody to only one six-month extension. In some cases this limitation is counterproductive in that the parents may be able to rectify the behavior which resulted in the abuse/neglect but they may not be able to complete the process

within the 12 months allowed for temporary legal custody. This amendment allows for further extension if the court finds the extension in the child's best interest.

Section 11. 41-3-411. Contributions by parents or guardians for youth's care. This section clarifies that the department can collect parental contributions if the child is in the physical or legal custody of the department. The statute currently states the court shall examine the financial ability of the parent to pay a contribution if the child is in the custody of the department. Many county attorneys interpret this to require that the child be in the temporary legal custody of the department. The amendment clarifies that the court can examine the financial ability of the parent at the TIA stage.

Section 12. 41-3-412. Permanency plan hearing. This section contains "housekeeping" language which clarifies that the reports submitted to the court must address the mental and physical health of the child, not the mental, physical, and psychological health. The Legislative Council opined that mental and psychological health are the same so the word "psychological" has been deleted. This section also contains the following amendments:

a) Change all references to "long-term custody" to "planned permanent living arrangement". The term "long-term custody" is disfavored by ASFA - the change reflects the intent of ASFA to assure that all placements other than reunification, guardianship, placement with a fit and willing relative, and adoption are planned placements which do not occur by default.

b) Add placement with a fit and willing relative to the conditions under which the court can approve a planned permanent living arrangement. This amendment reflects ASFA and is consistent with 41-3-604 which provides that the department is not required to file a petition to terminate parental rights if the child is placed with a relative.

c) Remove the age limit from the list of conditions which must be met before the court can approve a planned permanent living arrangement. This amendment is in response to social worker concerns that an option other than adoption must be available to children under 12 if in the best interests of the child.

d) Require that the court must make a specific finding that other, more permanent options are not appropriate or in the child's best interests before the court can approve a planned permanent living arrangement. This amendment provides protection for children under 12 for whom the permanency plan may be a planned permanent living arrangement.

Section 13. 41-3-413. Review hearing. This section requires that the review hearing be held every 12 months until the permanent placement for the child is finalized. By adding this requirement, the statute is ASFA compliant regarding court oversight of division efforts to finalize the permanent plan.

Section 14. 41-3-420. Treatment plan - contents - changes. This section amends the language to clarify that the court may order a treatment plan if the parents admit the allegations in the petition, the parents stipulate that the child is abused/neglected, or upon an adjudication that the child is a youth in need of care. This amendment is necessary because, under current practice, parents stipulate to the provisions contained in the treatment plan but do not stipulate to the abuse/neglect. The stipulation and treatment plan are submitted to the court. In some

jurisdictions, stipulations replace parent(s) appearance in court and the case proceeds on stipulation until a petition to terminate parental rights is filed. As a result, often the child is not adjudicated a youth in need of care until the termination phase. This extends the time the child remains in care because parents frequently do not understand that non-compliance with the treatment plan to which they stipulated can result in the court terminating parental rights. This amendment and the new section on stipulations should resolve that issue.

Section 15. 41-3-604. When petition to terminate parental rights required. This section clarifies that the 15 months for filing the termination petition starts when the child is in the physical custody of the state. Some attorneys interpret the statute to mean that the petition must be filed if the child has been in the legal custody of the state for 15 of the most recent 22 months. ASFA requires that the petition be filed when the child has actually been in the physical care of the state for 15 of the most recent 22 months so the amendment will assure ASFA compliance.

This section also clarifies that, if an exception to filing the termination petition exists, the court should either grant an extension for temporary legal custody, approve a planned permanent living arrangement or dismiss the petition. This amendment notifies county attorneys that, if an exception to filing the termination petition exists, the division still must have a legal basis for the child to remain in care under the custody of the state.

Section 16. 41-3-1102. Definitions (Youth Residential Services). This section defines "transitional living program" as a program with the goal of self-sufficiency in which supervision of the living arrangement of a youth 16 to 21 years of age is provided and adds "transitional living program" to the definition of "youth care facility." The Chafee Foster Care Independence Program created by The Foster Care Independence Act of 1999 expands funding for youth transitioning out of foster care. The division has identified the need for transitional living programs as a placement option for youth who require supervision in their living arrangement but do not require the level of supervision provided in foster care.

Section 17. 41-3-1103. Powers and duties of department. This section adds "transitional living programs" to the list of services for which the department administers state and federal funds and grants the department licensing authority for transitional living programs. Circa 1998, the division developed licensing rules for transitional living programs but, according to the Chief Legislative Counsel, no authority existed to develop the rules. Because of time constraints, the division could not incorporate the authority into legislation for the 1999 Session. This is the division's first opportunity to request legislative authority to develop and regulate transitional living programs statewide since receiving the opinion of the Legislative Counsel.

This section deletes youth assessment centers from the list of programs for which the department administers state and federal funds. The funds for youth assessment centers are administered by the Department of Corrections, not the department. In addition, the department administers funds for youths in need of care and a youth in need of care cannot be placed in a youth assessment center.

This section also contains "housekeeping" language to clarify that the division assumes responsibility for children in the physical/legal custody of the department and that responsibility is for room, board, clothing and transportation but does not include treatment. Treatment services are funded by a source other than the foster care budget.

Finally, this section allows the division to continue payments for youth up to age 21 who remain in care. Because many foster children do not complete high school until after their 18th birthday, this amendment will provide the division with statutory authority to make foster care payments until the child graduates from high school.

Section 18. 41-3-1115. Foster care review committee. This section removes antiquated language and clarifies that ASFA time frames must be met.

Section 19. 41-3-1142. Issuance of license - authority of issuing agency - rules. This section adds the requirement that applicants for youth foster home licenses must submit to a criminal and child protection background check. Criminal records checks for foster parents are required under ASFA so this amendment will make Montana ASFA compliant. Currently the division's authority to conduct the background check exists only in policy.

TITLE 42, ADOPTION

Section 20. 42-3-202. Initiation of preplacement evaluation - who conducts evaluation - payment of fees. This section removes the division from involvement in preplacement evaluations for direct parental placements. Currently, the statute requires that preplacement evaluations for direct parental placement adoptions be conducted by either the department, a licensed child-placing agency, or a licensed social worker who contracts with the department. The division's position is that the division should not be involved in contracting with private social workers to provide preplacement evaluation services to prospective adoptive parents who are not adopting children in the custody of the state. This amendment clarifies that either licensed social workers or licensed child-placing agencies shall conduct preplacement evaluations for direct parental placement adoptions and that the division has no role in them.

Section 21. 42-3-301. Requirement for preplacement evaluation. This section is "housekeeping" and clarifies that preplacement evaluations must be conducted on families with whom the department or licensed child-placing agencies place children adoptively in accordance with the preplacement evaluation procedures in Title 42, chapter 3, part 2.

Section 22. 42-4-112. Period for postplacement supervision. This section clarifies that the department does not provide postplacement supervision for direct parental placements. This is a companion section to Section 23.

Section 23. 42-5-101. Petition for adoption. This section contains "housekeeping" amendments which require that adoption petitions be verified, not notarized, require that the child's guardian ad litem (if applicable) receive a copy of the adoption petition, and clarify that the Rules of Civil Procedure apply except where modified.

Section 24. 42-5-103. Notice of hearing. This section contains "housekeeping" amendments which require that the child's guardian ad litem (if applicable) receive notice of the hearing on the adoption petition and which remove reference to Rules of Civil Procedure.

Sections 25, 26, 27 and 28. 42-8-101 et seq - Licensing of Child Placement Agency. One of these sections deletes the word "entice" from the definition of soliciting. The division

recommends this amendment because the term "entice" seems to have a negative connotation when applied to the relinquishment of a child by a birth parent.

These sections also clarify that child placement agencies may provide foster care services in addition to adoptive placement services. These amendments reflect practice in that several child placement agencies make both adoptive and foster care placements.

Section 29. New Section. Limitation on placement. This section clarifies that the department makes placement decisions, not the court. The division is requesting this amendment for two reasons: a) Some courts order placements of children which are inconsistent with the recommendations/available funding of the division; and b) Federal regulations require that the division have care and placement responsibility for the child. When the court orders a specific placement, the court moves out of the oversight function contemplated by the federal regulations and the division is unable to access federal funding for the child.

Section 30. New Section. Rulemaking authority. This section grants rulemaking authority to the department to administer the requirements of Title 41, chapter 3, Child Abuse and Neglect. Currently, the only rulemaking authority in Title 41, chapter 3, is for youth residential services and for preparing and processing reports and in making investigations.

Section 31. New Section. Stipulations. This section clarifies that the parents stipulate that their child is abused/ neglected, not that they will do the treatment plan and clarifies when the parents may stipulate. This amendment, with the amendment to 41-3-420 (treatment plans) will resolve the issue of lack of adjudication of the child until the termination of parental rights phase of the proceeding.

Section 32. New Section. Repealer. This section repeals the following:

a) 41-3-1014: Dispositional review hearing by district court because the disposition review hearing was replaced by the permanency planning hearing and this provision should have been repealed in either 1997 or 1999;

b) 41-3-1104: Youth facilities because this provision refers to the Department of Corrections and should have been repealed when the Youth Court Act was amended in either 1997 or 1999; and

c) 41-3-1114: Continuing jurisdiction of youth court because this provision refers to delinquent youth and youth in need of intervention and belongs in the Youth Court Act if applicable.

EXHIBIT NO. 2
DATE 1-17-01
BILL NO. SB116

Amendments to Senate Bill No. 116
1st Reading Copy

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
January 17, 2001 (2:20PM)

1. Title, line 8.
Following: "DEFINITIONS;"
Insert: "ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED;"

2. Title, line 12.
Following: "41-3-201,"
Insert: "41-3-202,"

3. Page 9, line 7.
Following: line 6
Insert: **"Section 5.** Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall ~~promptly~~ conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-411.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the

4. Page 25, line 5.
Strike: "31]"
Insert: "32]"

5. Page 37, line 29.
Strike: "29 through 31]"
Insert: "30 through 32]"

6. Page 38, line 2.
Strike: "29 through 31]"
Insert: "30 through 32]"

- END -

RESOURCE GUIDELINES

Improving Court Practice in Child Abuse & Neglect Cases

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

Duties Imposed by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) on State Juvenile and Family Courts

Federal Requirements Applicable to State Juvenile and Family Courts:

- Evaluation of reasonableness of services to preserve families.
- Periodic review hearings in foster care cases.
- Adherence to deadlines for permanency planning decisions.
- Procedural safeguards concerning placement and visitation.

Indirect Impact on Courts of Federal Requirements:

- More termination of parental rights cases.
- More adoption, custody, and relative placement cases.

Some Additional Duties Often Imposed on Juvenile and Family Courts By State Statute or Court Rule

Everything Specified by Federal Law, Plus the Following:

- Prompt review of emergency placements.
- Strict deadlines for adjudication (trial).
- Strict deadlines for disposition.
- Oversight of agency case planning.
- Periodic review in all cases.
- Stricter deadlines for permanency planning decisions.
- Procedural safeguards stricter than those specified by federal law and provided through the courts.
- More termination of parental rights proceedings due to updated grounds.
- Oversight of agency efforts to place abused or neglected children with relatives.

Source: M. Hardin, Judicial Implementation of Permanency Planning Reforms: *One Court That Works (ABA 1992).*

If reasonable efforts to preserve or reunify families are not evaluated and ensured through effective judicial review, then families and children are unnecessarily harmed.

Note: Additional information on P.L. 96-272 is provided in Appendix C. "Improving the Implementation of the Federal Assistance and Child Welfare Act of 1980," by the Hon. Leonard P. Edwards, superior court judge in Santa Clara County, California.

B. Purpose of Guidelines

The purpose of these resource guidelines is to set forth the essential elements of properly conducted court hearings. The guidelines describe the requirements of juvenile and family courts in fulfilling the role now placed upon them by federal and state laws. These guidelines also describe how court calendars can be efficiently managed to achieve efficiency and avoid delays; explain the court staffing and organization necessary to make the judicial process run smoothly; and clarify costs associated with such reforms.

These guidelines are meant to influence future administrative and funding decisions concerning juvenile and family courts. They are intended to help correct the gaping discrepancies that presently exist between legislative demands and judicial resources for child abuse and neglect cases.

C. Scope of Guidelines

These guidelines set forth the elements of a high-quality judicial process in child abuse and neglect cases. They specify the necessary elements of a fair, thorough, and speedy court process in cases brought for the protection of abused and neglected children. The guidelines cover all stages of the court process, from the preliminary protective hearing until juvenile and family court involvement has ended. These guidelines assume that the court will remain

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 1-12-01
SB 166

A. Authority of the Juvenile and Family Court and the Role of the Judge

Juvenile and family courts have the responsibility to protect the rights of parties before the court and ensure safe, permanent homes for abused and neglected children. Among the most pressing judicial concerns in abuse and neglect cases are the principles of treatment, rehabilitation, family preservation, and permanency planning.

Child protection agencies, service providers, guardians ad litem and attorneys all play critical roles in child abuse and neglect cases. For the child welfare system to function in the best interests of children, it is essential that all these major participants discharge their responsibilities in an effective and responsible manner. Ultimately, however, children are placed pursuant to court orders. Therefore, the juvenile court has the responsibility to hold the entire system accountable. To discharge this responsibility, the juvenile court must have authority commensurate with the task assigned.

Juvenile and family court judges can be leaders in their communities, state capitals, and at the national level to improve the administration of justice for children and families. Judges can be active in the development of policies, laws, rules and standards by which the courts and their allied agencies and systems function. Judges can inform the community of the unique and diverse needs of troubled children and their families. Judicial responsibility for impartiality does not preclude judicial leadership. The very nature of the office mandates that the judge act as an advocate and convener to assure that needed services for children and families are available and accessible.

Judges should encourage the continuing education of all who serve in the juvenile and family court system, including themselves. Professional training topics should encompass cultural competence and gender fairness, as well as interdisciplinary education among all court-related disciplines.

Juvenile and family court judges must have the authority by statute or court rule to order, enforce and review delivery of services and treatment for children and families. The judge must be prepared to hold all participants accountable for fulfilling their roles in the court process and the delivery of services.

State laws differ concerning the authority of juvenile and family courts to determine what services are to be provided to abused and neglected children and their families, to specify where foster children are to be placed, to decide the terms of agency case plans, to resolve disputes between different public agencies, and to set the terms of visitation. None of these should be shielded from judicial oversight, because each has constitutional overtones. Without procedural protection, decisions touching on these issues could be instruments of discrimination or oppression.

The following are some of the possible bases for a court to revise or overturn agency decisions concerning services, case plans, child placement, interagency disputes, or visitation:

(1) Agency action is contrary to law.

(2) Agency recommendations are not in accord with the evidence presented at the hearing. The proposed disposition will not adequately address the abuse or neglect that the court found the parents to have committed.

(3) Evidence before the court demonstrates the futility or inappropriateness of action proposed by the agency.

The court must insist that the proposed plan or disposition is complete and, when it is not, must direct the agency to respond. The court's oversight role also includes the application of sanctions against parties which fail to appropriately respond to court orders.

D. Key Decisions the Court Should Make at the Preliminary Protective Hearing:

- Should the child be returned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

The preliminary protective hearing provides the court with an opportunity to make basic decisions concerning the placement of the child; take steps to move the litigation forward; oversee the agency's initial involvement with the case; and emphasize specific problem-solving so that the child can safely remain home or be returned home as quickly as possible.

The following is a discussion of specific key decisions to be made by the court at the preliminary protective hearing:

• Should the child be returned home immediately or kept in foster care prior to trial?

As explained above, the key decision that the court makes at the preliminary protective hearing is whether to return a temporarily-placed child home immediately. Often, the child's removal from home triggers the preliminary protective hearing, and the hearing is held to decide whether the child needs to stay outside the home.

In deciding whether to return the child home, the court evaluates the danger to the child by hearing allegations of abuse or neglect. In addition, the court needs to examine whether there are any possible means of protecting the child without placing the child in foster care.

• What services will allow the child to remain safely at home?

To decide whether there are available means to allow a child to be maintained safely at home, the court must be made aware of services available in the community. In neglect cases, for example, emergency homemakers, day care, or in-home baby-sitters can often eliminate immediate danger to the child. In a wide variety of cases, intensive home-based services in which professionals spend long periods of time in the home sharply reduce danger to the child.

• Will the parties voluntarily agree to participate in such services?

In some states, the court can order specific, in-home services to ensure the child's safety while remaining or returning to the family. In other states, the court can order that the child be maintained in the home, or returned home, with child welfare agency assurance that family-based or home-based services will be provided. All juvenile and family court judges must become informed about the existence and availability of services in the community.

• Has the agency made reasonable efforts to avoid protective placement of the child?

In connection with the decision to remove a child from home, the court also must determine whether the responsible public agency has made reasonable efforts to preserve the family. Upon deciding to remove a child, the court must decide both whether the agency has

J. Preliminary Protective Hearing Checklist

Persons who should always be present at the preliminary protective hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the preliminary protective hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Courts can make sure that parties and key witnesses are present by:

- Requiring quick and diligent notification efforts by the agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- Requiring caseworkers to encourage attendance of parents and other parties.

Filing the petition:

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.
- The petition should be complete and accurate.

Key decisions the court should make at the preliminary protective hearing:

- Should the child be returned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

Additional activities at the preliminary protective hearing:

- Reviewing notice to missing parties and relatives;
- Serving the parties with a copy of the petition;

J. Adjudication Hearing Checklist

Persons who should always be present at the adjudication hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the adjudication hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Other witnesses

Key decisions the court should make at the adjudication hearing:

- Which allegations of the petition have been proved or admitted, if any;
- Whether there is a legal basis for continued court and agency intervention;
- Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family.

Additional decisions at the adjudication hearing:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge may need to make additional temporary decisions at the conclusion of adjudication. For example, the judge may need to:

- Determine where the child is to be placed prior to disposition hearing;
- Order further testing or evaluation of the child or parents in preparation for the disposition hearing;
- Make sure that the agency is, in preparation for disposition, taking prompt steps to evaluate relatives as possible caretakers, including relatives from outside the area;
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child;
- Direct the agency to continue its efforts to notify noncustodial parents, including unwed fathers;
- When the child is to be in foster care prior to disposition, set terms for visitation, support, and other intra-family communication including both parent-child and sibling visits.

The court's written findings of fact and conclusions of law at the adjudication hearing should:

- Accurately reflect the reasons for state intervention.
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Provide a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Set date and time of next hearing, if needed.

K. Endnotes

1. See 42 USC §§ 672(a)(1), 671(a)(15).

2. For a general discussion of the reasonable efforts requirement, see National Council of Juvenile and Family Court Judges et al., Making Reasonable Efforts: Steps for Keeping Families Together (New York: The Edna McConnell Clark Foundation, 1987); Debra Ratterman et al., Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation (Washington, D.C.: American Bar Association, 1987).

K. Disposition Hearing Checklist

Persons who should always be present at the disposition hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the disposition hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Submission of reports to the court. Predisposition reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

When the agency recommends foster placement, an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the affidavit:

- A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family;
- Identification of relatives and friends who have been contacted about providing a placement for the child.

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- A description of the placement and where it is located;
- Proposed arrangements for visitation;
- Placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
- An appropriate long-term plan for the child's future; and
- Proposed child support.

Key decisions the court should make at the disposition hearing:

- What is the appropriate statutory disposition of the case and long-term plan for the child?
- Where should the child be placed?
- Does the agency-proposed case plan reasonably address the problems and needs of child and parent?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- When will the case be reviewed?

A. Introduction

Review hearings are the court proceedings which take place after disposition and in which the court comprehensively reviews the status of the case. Review is vital to cases involving each child within the court's jurisdiction, whether or not the child is in placement. At the conclusion of the disposition hearing the court identified a long-term goal for the child. If family reunification was the case goal, the original case plan approved at the disposition hearing should have identified behavioral changes required of the parents, services to be provided, a long-term plan for the child's future, and other appropriate details. Review hearings examine progress made by the parties since the conclusion of the disposition hearing. They also provide an opportunity for correction and revision of the case plan. The purpose of review hearings is to make sure that cases progress and that children spend as short a time as possible in temporary placement. No matter how carefully initial case planning is examined at the disposition hearing, periodic review is needed to keep cases moving toward successful completion.

Review hearings should re-examine long-term case goals and change any which are no longer appropriate. Just as review hearings should hasten family reunification when possible, they should also help identify cases in which reunification should be discarded as a goal because a child cannot safely be returned home in a timely fashion.

Review hearings are necessary because continuation of a child in foster care for an extended time has a negative affect on a child and family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family.[1] A careful decision concerning the future of every child is needed as soon as possible. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously.

Review hearings provide regular judicial oversight of children in foster care and can help judges identify inadequacies in government's response to child abuse and neglect. For example, incomplete case plans can prolong foster care placement by failing to clearly specify what each party must do to facilitate family reunification. Agency case plans may be based on boilerplate forms which fail to adequately document a case. A plan may be developed solely by agency staff, without the collaboration of parents or the child. A plan may fail to specify agency services or particular behaviors and changes expected of the parents.

Unresolved case disputes may block case planning progress. Each party may be proceeding unilaterally without confronting a disputed issue, although the dispute may constitute a roadblock to family reunification. When agency caseloads are high, cases may be neglected. If things are going "smoothly" in a child's foster home, appropriate attention may not be paid to family rehabilitation and progress toward reunification.

The agency may unnecessarily restrict parent-child contacts, accelerating breakdown of the parent-child relationship. Frequent parental visitation is essential but burdens agency caseworkers. Parents may be unaware that they can challenge visitation arrangements and may become discouraged by the terms imposed.

Agencies may fail to take timely action to move children out of foster care. Such inertia may be due to caution, indecision, or subtle incentives to maintain the legal status quo. Bringing a termination of parental rights proceeding is time consuming and may even appear forbidding to individual caseworkers. Without prodding by foster care review, workers may forego legal action.

Effective review hearings can address each of these problems and can improve planning for children. Judicial review helps a case progress by requiring the parties to set timetables, take specific action, and make decisions. Review hearings provide a forum for the parents, helping assure that their viewpoint is considered in case planning. Through

J. Review Hearing Checklist

Persons who should always be present at the review hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Relatives with legal standing or other custodial adults
- Foster parents
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the review hearing:

- Extended family members
- Adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses
- School officials

Key decisions the court should make at the review hearing:

- Whether there is a need for continued placement of a child.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for each child.

Submission of reports to the court:

Pre-Review Report

Pre-review reports by the child welfare agency and the GAL/CASA can serve the same purpose as predisposition reports. Pre-review reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

Affidavit of Reasonable Efforts

When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted. The following are some key elements of the affidavit:

- A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;
- An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.

REASONABLE EFFORTS TO PRESERVE FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN

HEALTH & WELFARE
EXHIBIT NO. 4
DATE 1-17-01
SB166

Require Reasonable Efforts: We recommend that State law require the court to determine whether the State has made reasonable efforts to prevent placement, reunify the family, or secure a new permanent home for the child.

Child's Health and Safety Paramount: We recommend that State law require that, in the implementation of reasonable efforts, the child's health and safety be the paramount concern.

Reasonable Efforts to Preserve and Reunify Families: We recommend that State law require that, in determining whether the State has made reasonable efforts to prevent placement and reunify the family, courts consider whether services to the family have been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, State law should require the court to consider the following:

a. Dangers to the child and the family problems precipitating those dangers;
b. Whether the agency has selected services specifically relevant to the family's problems and needs;
c. Whether caseworkers have diligently arranged those services;
d. Whether appropriate services have been available to the family on a timely basis; and
e. The results of those intervention.

Reasonable Efforts to Finalize Placement: We recommend that, in determining whether the State has made reasonable efforts to make and finalize a new permanent home for the child (in cases where reunification is no longer the child's exclusive permanency plan), State law instruct courts to consider whether services to achieve that goal have

been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, the law should require the court to take into account the following:

a. Whether the agency has identified an appropriate strategy to make and finalize a new permanent placement for the child;
b. Whether there has been diligent arrangement for the provision of those services; and
c. Whether adequate and appropriate services have been available on a timely basis.

Reasonable Efforts Include Concurrent Planning: We recommend that State law indicate that reasonable efforts may include concurrent efforts both to reunify a family and to ensure that an adoptive or other alternative permanent home will be available if needed by the child.

Procedure for Determining Whether There Have Been Reasonable Efforts to Preserve the Family or to Finalize a New Permanent Home: We recommend that State law require that:

a. The agency should submit a sworn statement prior to any judicial hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. This statement, which should be submitted to the court and the parties at least 5 days in advance of the hearing, should describe the reasonable efforts made by the agency or the rationale for not making such efforts.
b. Following the hearing, the court will determine whether or not the agency made reasonable efforts and enter brief findings describing the efforts.

Procedure for Finding that Reunification Services Are Not Required: We recommend that at any time, upon motion of any party or on the Court's own motion, State statutes or court rules authorize the court to determine that reunification services are not required.

ADOPTION AND PERMANENCY GUIDELINES

Improving Court Practice in Child Abuse and Neglect Cases

EXHIBIT: 5

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

Ex.
SENATE HEALTH & WELFARE
5
DATE 1-17-01
SB 116

of decisions made by courts and child welfare agencies.

This collective experience comes together in the *ADOPTION AND PERMANENCY GUIDELINES* for the purpose of defining the role of the court, and to ensure that everything possible is done to achieve timely permanence for every abused or neglected child who cannot or should not be reunified with his or her family. The *GUIDELINES* define the court's role in holding parties accountable to fulfill their responsibilities to the child. It describes the court's responsibility to identify system barriers to successful adoption and to actively advocate for needed system improvements.

D. Scope of the *GUIDELINES*

The *GUIDELINES* describe each step between the point at which the court determines reunification is not an option and the point at which the juvenile and family court is no longer involved in the case because the child has achieved permanence in a new home. These steps include:

- Permanency Planning
- The Permanency Hearing
- Termination of Parental Rights
- The Appeals Process
- Adoption Related Issues Judges Must Understand Prior to Conducting Review Hearings that Follow Termination of Parental Rights
- Review Hearings that Follow Permanency Hearings or Termination of Parental Rights
- Hearings to Formalize Case Closure and Finalize Adoptions

The beginning point in this process can occur at the time of the filing of the original abuse or neglect complaint in certain circumstances (e.g., the parent has caused the death of a sibling), or at the point that reunification attempts have failed or are at risk of failing. The ending point can occur at the time a relative, foster parent or other non-relative adoption is finalized; or it can occur at the point that a permanent and legally secure custody or guardianship with a relative or non-relative is finalized and court involvement ends.

It is important to note that these *ADOPTION AND PERMANENCY GUIDELINES* are written to address the issue of permanency for abused and neglected children. They are not written to address the topic of voluntarily surrendered infants. Abused and neglected children are often toddlers and older children for whom reunification has been ruled out. Most have special needs due to prior experiences of neglect or abuse. As a result, the court's role in handling these cases is more extensive and specialized than with voluntary infant adoptions.

It is also important to note that the Indian Child Welfare Act (ICWA) sometimes mandates requirements for Indian children that are different from the recommendations in these *GUIDELINES*. Throughout the document we attempt to identify all such areas either within the text itself or by endnote.

Part of the court's role in these cases is to anticipate the post-adoptive challenges that will occur for many families who adopt abused and neglected children with special needs. The *ADOPTION AND PERMANENCY GUIDELINES* will explore the court's responsibility to help ensure that adequate post-adoptive subsidies and services exist for every eligible adopting family and that these services are easily accessible when needed. Without this step, the court would fail to do everything possible to make sure that all children have the best chance possible of long-term success with new families.

E. Key Principles

All of the key principles to be discussed rest on one foundational element:

> All children have the right to a healthy and safe childhood in a nurturing, permanent family, or in the closest possible substitute to a family setting.[9]

The majority of abused and neglected children who reach the point of termination of parental rights and adoption have previously spent many months

clock is ticking for these children and everything possible must be done to provide them with a new permanent home as quickly as possible. Examples of methods to reduce unnecessary delays that were not previously covered in the *RESOURCE GUIDELINES* include:

Concurrent Planning – When, during the reunification process, a child's chances of successful reunification are deemed to have a high risk of failure, judges should make sure that the agency is pursuing concurrent planning.[14] Such children should be placed either with relatives who will adopt or in foster-adopt homes.[15]

Alternative Dispute Resolution Techniques – All juvenile and family court systems should have alternative dispute resolution processes available to the parties so that trials can be avoided whenever possible and appropriate. Such systems should include family group conferencing, mediation and settlement conferences.[16] These systems expedite sound decision-making and avoid lengthy appeals because they often produce full or partial agreement of the parties.

- **Believe in the Adoptability of All Children**

Judges should not use the concern that an adoptive home may not be found for a child as a reason not to move forward with termination of parental rights.[17] Termination of parental rights does not mean that prior positive relationships between the child and other adults or siblings must be discontinued. Failure to proceed with termination of parental rights in most cases when a child cannot be safely reunified practically ensures that the child will not achieve permanency.

- **Consider Adoption with Contact**

This term describes a variety of arrangements that involve the birth family, other individuals who were a positive part of a child's life before entering an adopting home, and the child who now resides with adopting parents. This contact occurs both prior to and after the adoption is finalized. It can range from sending birthday cards to the child or providing pictures to the biological parents (directly or through neutral third parties) to regular visitation. The determining factor as to whether adoption with contact is appropriate must always be the best interests of the child, not the desires of the adults. Adoption with contact recognizes that many children who move into new families through adoption are old enough to have established strong relationships with biological parents, siblings and others and that completely severing these relationships may not be in the child's best interests.[18]

- **Provide Expedited Appeals**

An expedited appeals process for cases involving termination of parental rights and adoption is crucial to permanency. Whether accomplished by court rule or by legislation, appellate courts at all levels should give the highest priority to hearing these appeals and issuing final decisions.[19]

- **Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Adoptive Placements and Timely Adoption Finalizations**

When parental rights have been terminated, the court must commit to frequent review of the case until the child has been placed in an adoptive home and the adoption has been finalized. For the group of children for whom adoptive homes require intensive recruitment, these reviews are critical. Judges must move out of the courtroom and into the community, raising community awareness that these are **our** children who need new families. Judges must engage the community in the effort to find a permanent home for every child.

- defining success by timely permanency, whether it is reunification or the alternate plan.

In order to ensure the occurrence of good faith efforts at reunification under concurrent planning, it is critical that foster and relative families receive additional training and that interactions between the foster family or relative, the birth family and the child are carefully monitored. Using family decision-making or other means of actively involving the extended family will help to ensure that active and reasonable efforts are made to reunify *and* the focus on the child's best interests is maintained.

When concurrent planning is used, either the parents should be ready for the child's return or a filing of termination of parental rights should be prepared prior to the time of the permanency hearing. If reunification fails, the child should already be in the home that will become the adoptive home.

Use of Foster-Adopt Homes[27]

"The dominant feature of the special needs[28] adoptive family is that the vast majority of them have been foster parents first."[29] This is a vast change over practice in the 1950s, when foster parents were discouraged from forming attachments with foster children and children were moved regularly to avoid such attachments. We now know that multiple moves break the bonds of trust and attachment formed by the child and consequently, multiple moves harm the child. Multiple moves compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties.

Multiple placements can be avoided for a child who cannot be placed with relatives by using foster-adopt homes, also called legal risk homes or resource homes. These parents have been licensed to provide a temporary foster home, but if the child cannot be reunified with the birth family, then the home becomes the adoptive home for the child. Risk placements of this nature are specifically authorized under ASFA.

Family Decision-Making

The purpose of this best practice technique is to build better alliances among the family, the child welfare agency, the child's tribe, where applicable, and the court for the purpose of providing a safe and permanent home for the child. To avoid the dynamic of the "system" telling the family what they need to do to fix their problems and the family resisting the intrusion, family decision-making builds communication, cooperation and collaboration between the family, the child's tribe, when applicable, and child welfare professionals.

Family decision-making (also referred to as family group conferencing and family unity meetings) recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Instead of acting as adversaries trying to keep information from the authorities, family members become active participants in the decision-making process.

Common values across all models reflect that the process is family focused, strength-based, community-based and culturally appropriate. Details of models vary to some degree but generally involve the following:

- All family members who wish to be present at the family meeting are invited. Assistance, if needed, is provided to enable their attendance. Some models give the parents veto power over which family members may attend. If the child is an Indian child, a representative from the child's tribe should be invited to attend.
- The family can identify other non-family supportive individuals who are also invited.
- An independent coordinator arranges the meeting. The caseworker is present but does not lead the meeting.
- Information is shared by all present, usually starting with the caseworker who presents the facts of the neglect or abuse and related information to the family. The family asks questions of the

caseworker and others to make sure they have full information regarding the issues.
- In most models, the professionals leave the room and allow the family to discuss the case in private. The family's job is to create a plan to ensure that the child is cared for and protected from future harm. In some models, the professionals are permitted to remain in the room.
- The family presents and explains their plan to the professionals, who have veto power. Consensus can usually be reached.[30] The court must ultimately approve the plan.

Use of family decision-making, in addition to assisting with timely reunification, can assist the family to understand when reunification is not possible. Family decision-making can also help overcome resistance to severance of parental ties. By giving the family the opportunity to understand the need for permanency and security for the child in one stable home, family decision-making can open the door for relative or third-party adoption and, when appropriate, create a proposed plan that includes adoption with contact. Because family decision-making usually creates an agreed plan, lengthy trials of termination of parental rights and lengthy appeals can be avoided.

C. Important Permanency Definitions

Judges often face the difficult decision of choosing among options for a child's permanent family. Three concepts assist in evaluating such options:

- Preferred Options for Permanency;
- Permanency Characteristics; and
- Compelling Reasons.

Preferred Options for Permanency

This first concept recognizes that some permanent options are preferred over others and that these preferred options may change over time.[31] The first preferred option for permanency is reunification with the biological parents. The next preferred option is adoption by the relative or foster family with whom the child is living. The next preferred option is adoption by an appropriate family with whom the child has a positive existing relationship (but is not living with) – i.e., a relative, former foster parent or adopting family of a sibling. The next preferred option is recruitment of a new family who will adopt the child. Permanent guardianship or permanent custody is the final preferred option for permanency when adoption is not possible or exceptional circumstances exist, but only if the relationship meets the legally secure components described in the next section.

An example of how these preferences can change over time would be with regard to relatives and foster parents. Relatives are generally the preferred persons to adopt or enter into an alternative permanent relationship. However, if a child has been in a foster home for an extended period of time, is adjusting well, bonding to the foster family and the foster family wishes to adopt, *and* if a relative comes forward after many months and expresses interest, the foster parents would be the preferred option because of their relationship with the child over an extended period of time.

Permanency Characteristics

This second concept is very important to apply when a judge must decide whether a non-adoptive relationship with a relative or non-relative is an acceptable permanent plan. Permanency includes the following characteristics:[32]

- A judicially created relationship that is intended to be permanent and self-sustaining; a relationship that will last through the child's minority and continue with lifetime family relationships;
- A legal relationship that is binding on the adults awarded care, custody and control of the child;
- The parents in the permanent family have the right to protect, educate, have care and control of

Chapter II: The Permanency Hearing

A. Purpose of the Hearing

What was once called the dispositional hearing under P.L. 96-272[34] and related state legislation has now been designated by ASFA as the *permanency hearing*. The permanency hearing represents a deadline for the court to determine the final plan in a neglect or abuse case that will move the child out of temporary foster care and into a safe, nurturing and permanent home.

At the permanency hearing, the judge must order one of the following permanent plans for the child and specify the date that the plan will be implemented:

- Return to the parent;
- Proceed with adoption by a relative, foster parent or other non-relative with the state filing a petition to terminate parental rights, if necessary;
- Proceed with legal guardianship;
- Proceed with permanent placement with a relative, foster parent or other non-relative; or
- Provide another specified permanent living arrangement, *if* there is a compelling reason why it would not be in the best interests of the child to proceed with one of the other options.

B. Timing of the Hearing

Both federal and state statutes govern timetables for permanency hearings. Effective November 1997, ASFA expedited federal time lines for permanency hearings, moving them six months earlier than previously required by P.L. 96-272. The general requirement of ASFA is that a permanency hearing must take place no later than 12 months after a child has entered foster care.[35] For purposes of this requirement, children are considered to have "entered foster care" on the earlier of: a) a judicial finding that the child has been subjected to child abuse or neglect; or b) 60 days after the child is removed from the home. With many states requiring an adjudication of abuse or neglect within 30 days of removal, the date of adjudication will likely be the operative date.[36]

It is important to note that these time frames are *maximum* time frames. A case may move to this hearing as soon as 30 days after adjudication when it is clear that reasonable efforts to reunify need not be made.[37] In these circumstances the permanency hearing and dispositional hearing on the complaint are held concurrently. Examples when it could be clear at adjudication that reasonable efforts need not be made include:

- parents subjected the child to aggravated circumstances as defined by state law (examples cited in ASFA include abandonment, torture, chronic abuse, and sexual abuse);
- a parent has aided, attempted, conspired, solicited, or committed the murder or voluntary manslaughter of another child of that parent;
- a parent has committed a felony assault resulting in serious bodily injury to the child or another of the parent's children;
- there has been a final decision on an involuntary termination of parental rights to a sibling; or
- other circumstances under which efforts to preserve or reunify the family are inconsistent with the child's permanent plan, holding the child's health and safety as paramount.[38]

When the original, court approved plan is reunification, the permanency hearing should be held as soon as it appears that reunification will not be achieved. If this occurs before 12 months, the permanency hearing should be moved earlier. If it is believed prior to the permanency hearing that there are no other alternatives to termination of parental rights, the TPR petition should be filed and served in advance of the permanency hearing. The scheduled permanency hearing can serve as both the permanency hearing and a pre-trial on the TPR petition.[39]

by using ethnicity as a factor in adoptive placement, courts and child welfare agencies are currently unclear regarding how ethnicity can be considered and under what circumstances.

Until clearer guidelines emerge regarding when ethnicity can be considered as a factor, NACAC suggests that when transethnic placements occur (approximately 18% to 20% of adoptions are transethnic)[99], agencies must prepare families to handle the unique responsibilities of transethnic parenting. Transethnic adopting families need access to information and resources so they can effectively teach their children how to take pride in their heritage and prosper as a member of a minority culture.[100]

The judicial role in dealing with MEPA complexities includes:

- As judges monitor reasonable efforts throughout a case, to ensure that agency policies and practices do not deter reunification services and relative placements for families of color.
- To ensure that the agency has adequate programs for the recruitment of foster families and adoptive families that are reflective of the ethnicity of the children needing such placements.
- When an adoptive home must be recruited for a minority child, to ensure that all available specialized placement agencies are being used.
- To ensure that ethnicity does not delay or deny a child an appropriate foster or adoptive placement.
- To ensure that when a transethnic placement occurs, the child and parents receive adequate preparation, information and resources to make the placement a success.

At any given time, an estimated 1.5 % of foster children – about 8,000 – are available for adoption and, as yet, no adoptive family has been identified for them.[101]

B. Adoption Recruitment Best Practices

ASFA requires that reasonable efforts extend beyond the permanency planning hearing to achievement of permanency for a child and closure of the case. Adoption recruitment is one of the activities that judges must now determine to be "reasonable." This determination includes whether the child welfare agency has:

- adequate programs to recruit and identify prospective adoptive parents both locally and beyond state boundaries;
- adequate staff to complete home studies in a timely manner and to prepare adoption assistance agreements and interstate documentation; and
- appropriate and accessible services to place and stabilize a child in the permanent home.

Adoption recruitment must encourage collaboration with other agencies and the community. For an Indian child, it is essential that recruitment include the child's tribal community in order to create the possibility of recruiting a Native American home. Recruiters must reach out to families, bring families forward who express interest and recruitment processes must be designed to retain the families' interest by assisting them through a timely process of application, approval, full disclosure and placement.[102] Among the components of effective adoption recruitment are:[103]

- a clear understanding of the demographics of children awaiting adoption;
- a strong agency reputation in the community with validation by respected community organizations and leaders – or, in the alternative, collaboration with agencies who do have a strong community reputation and who will serve as the "front door" to the recruitment process;
- excellent "customer service" to families who express interest

etc., and for emergency needs when there is no other source of such funding and when lack of such funding could result in the breakup of the adopting family?

If judges find the post-adoptive services system in their jurisdiction lacking, they should make the consequences of the lack of services known to the policy makers and then advocate for improved systems of post-adoptive services.

G. Adoption Assistance Agreements

Prior to finalization of a special needs adoption, an adoption assistance agreement should be made in writing between the adopting parent(s) and the social services agency. This agreement should include:

- the nature and amount of adoption assistance to be provided to the child and adopting parent(s) after the adoption is finalized;
- agreed services that will be provided to the child and family post-finalization and the method of funding for these services;
- how medical needs of the child will be covered;
- under what circumstances the agreement can be modified either to increase or decrease payments or services;
- the continued effectiveness of the agreement if the adoptive parents move out of state; and
- names and phone numbers of persons adopting parents can contact for assistance if additional questions or needs arise.

The court should be aware of this information during review hearings to ensure that these issues are resolved with the adopting parent(s) well before the adoption is ready to be finalized.

Endnotes

91. See Chapter I, Section A for a description of the Indian Child Welfare Act.

92. Rosenthal, J., Groze, V., Adoption, race and identity: From infancy through adolescence, 1992. Praeger, New York, NY.

93. Submitted under contract to DHHS, Office of Human Development Services, Rockville, MD. 1986.

94. Lakin, D. and Whitfield, L., supra.

95. Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) was provided by Dr. Penelope L. Maza, Senior Policy Research Analyst, the Children's Bureau.

96. 42 USC 5115a.

97. It is important to note that MEPA expressly excludes ICWA cases from its requirements.

98. RACE MATTERS, by Diane Riggs and Joe Kroll, Adoptalk, a publication of the North American Council on Adoptable Children, Spring 2000.

99. Data reported by Joe Kroll, Director, North American Council on Adoptable Children.

100. RACE MATTERS, supra note 99.

101. FOSTER CARE: HHS Could Better Facilitate the Interjurisdictional Adoption Process, GAO/HEHS-00-12, November 1999.

102. See Appendix K for a description of the activities of the two courts in the NCJFCJ Permanency Planning for Children Department's Expedited Adoption Project. The two courts are Multnomah County Juvenile Court in Portland, Oregon and the Hamilton County Juvenile Court in Cincinnati, Ohio.

103. Taken in part from Lakin, D. and Whitfield, L., Adoption Recruitment: Meeting the Needs of Waiting Children, Adoption Policy and Special Needs Children, 1997. Auburn House, Westport, CT.

104. Information condensed from the GAO report Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process, November 1999.

105. These plans are required under Title IV-E of the Social Security Act in order for states to receive federal foster care funds for maintenance of foster children, specific administration costs associated with foster care programs and adoption assistance.

106. The ICPC is explained in Chapter 1, Section A and in Appendix C.

107. Health and Human Services administrative data place the number of finalized adoptions of foster children across state lines at less than 250 in 1998.

108. It should be noted that for Indian children, the child's tribe establishes its community standards for home studies.

109. For example, who should be present at hearings, proper service of process, proper legal representation, etc.

110. See Appendix D for a sample Border Agreement.

111. Liz Oppenheim, Manager, Association of Administrators of the Interstate Compact on Adoption and Medical Assistance, American Public Human Services Association made a substantial contribution to this section.

112. Ibid.

113. This option was established by the Consolidated Omnibus Reconciliation Act of 1985.

114. Adoption and Safe Families Act, November 1997, Sec. 306.

115. Joe Kroll and Ginny Blade of the North American Council on Adoptable Children made substantial contributions to this section.

116. From *Preliminary Survey of Post-Adoptive Services in Ohio, Illinois, Indiana & Michigan* prepared by Barbara Seibel for NCJFCJ, June 1999.

No. 98-336

IN THE SUPREME COURT OF THE STATE OF MONTANA

2000 MT 11

IN RE THE MATTER OF J.H.,

Youth in Need of Care.

APPEAL FROM: District Court of the Thirteenth Judicial District,

In and for the County of Yellowstone,

The Honorable G. Todd Baugh, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Kevin Gillen, Gillen Law Office, P.C.; Billings, Montana

For Respondent:

Hon. Joseph P. Mazurek, Attorney General; Mark W. Mattioli,

Assistant Attorney General; Helena, Montana

Dennis Paxinos, Yellowstone County Attorney; Melanie Logan,

Deputy County Attorney; Billings, Montana

Damon Gannett, Attorney at Law (guardian ad litem); Billings,

Montana

Submitted on Briefs: August 26, 1999

Decided: January 20, 2000

plans were appropriate for the needs of the family, that they were not complied with, and that they were not successful. The District Court went on to state that J.H.'s mother was unable or unwilling to provide J.H. with adequate parental care and that her conduct and condition had not improved over the past years and were unlikely to change within a reasonable time.

¶26.This Court has previously recognized that mere compliance with a treatment plan is not enough. *See In the Matter of the Custody and Parental Rights of F.M.* (1991), 248 Mont. 358, 363, 811 P.2d 1263, 1267. Montana law requires the treatment plan to be successful. *See* § 41-3-609(1)(e)(i) and (f), MCA (1997).

¶27.In this case, the two treatment plans approved by the District Court for J.H.'s mother covered a period of approximately four and one-half months. The first treatment plan covered a period of approximately two and one-half months from March 21, 1997, to June 1, 1997, and listed the following goals: (1) to assist J.H.'s mother in stabilizing her environment; (2) to assist J.H.'s mother in improving her relationship with J.H.; and (3) to provide the DPHHS with the necessary information for determining whether the child will be returned to J.H.'s mother's home. The second treatment plan covered a period of approximately two months from December 15, 1997, to February 15, 1998, and listed the following goals: (1) demonstrate competence in all areas of parenting; (2) establish a stable financial status while incarcerated so that J.H.'s basic needs can be met; and (3) assess whether J.H.'s mother has made sufficient progress in her psychological/emotional functioning.

¶28.A DPHHS social worker testified that at the time the first treatment plan was offered to J.H.'s mother, the DPHHS had an understanding, based on information provided by J.H.'s mother, that she would be released from prison in June 1997. However, there is no indication in the record that anyone from the DPHHS verified when J.H.'s mother would actually be eligible for release. Instead, the DPHHS offered J.H.'s mother another short-term treatment plan based on what the DPHHS social workers thought the child needed.

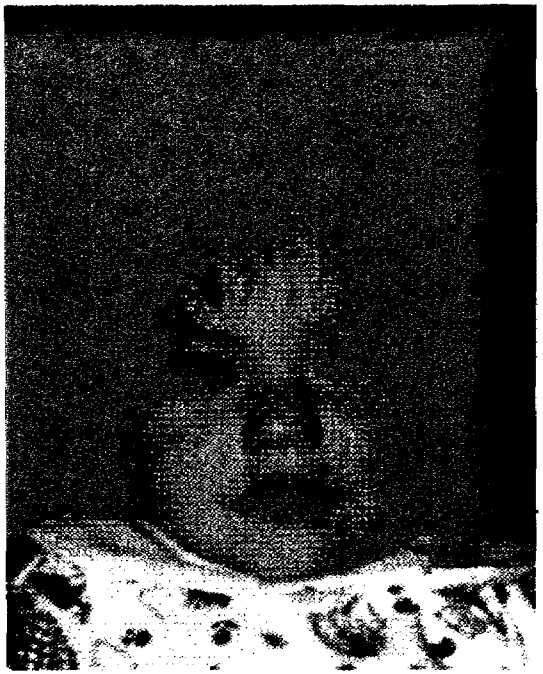
¶29.Several witnesses, including a probation and parole officer, a DPHHS social worker, and persons involved with the parenting program at the prison, testified that J.H.'s mother had made significant efforts to comply with the treatment plans, but the treatment plans were not successful in rehabilitating her to adequately parent J.H. Despite J.H.'s mother's substantial compliance with the treatment plans, the short-term treatment plans were not successful as a result of her extended incarceration. Therefore, we conclude that the District Court did not err when it determined that the treatment plans were not successful.

¶30.However, we feel it is important to note that this case raises concerns regarding the DPHHS' approaches and procedures. *See Matter of J.S. & P.S.* (1994), 269 Mont. 170, 178-79, 887 P.2d 719, 724 (Gray, J., specially concurring). As Justice Gray pointed out in the *Matter of J.S. & P.S.*, "[a] treatment plan is intended to be a good faith, joint effort by both the [DPHHS] and the parent to preserve the parent-child relationship and the family unit." 269 Mont. at 178-79, 887 P.2d at 724. Here, the mother was offered two short-term treatment plans while she was incarcerated and was led to believe that if she complied with these plans she would be able to parent J.H. upon her release from prison. A DPHHS social worker testified that the short time frame for the treatment plans was due to representations made by J.H.'s mother regarding when she expected to be released. There was no indication in the record that the DPHHS conducted any follow up investigation to determine when J.H.'s mother would actually be

Endangered Missing

HEALTH & WELFARE
EXHIBIT NO. 5
DATE 1-17-01
SB 116

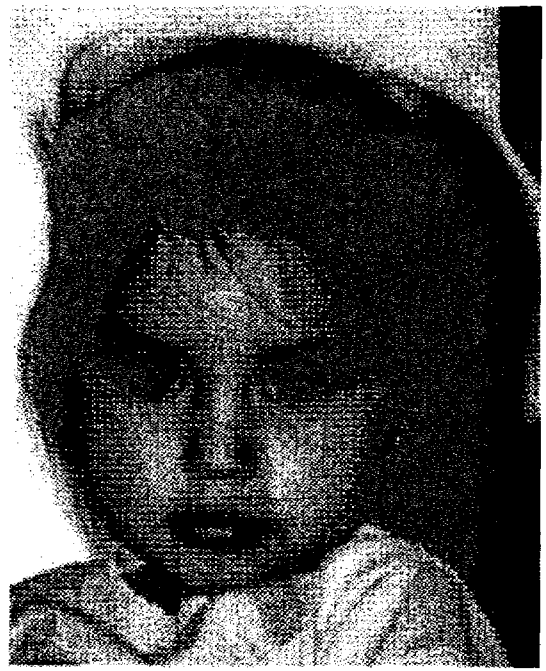
Ateah McLean



Birth: 4/10/96
Missing: 6/25/98
Age Now: 2 yrs
Race: Am. Ind.
Sex: Female
Hair: Lt. Brown
Eyes: Blue
Ht: 3'00"
Wt: 32 lbs

Missing From:
Billings
MT
United States

Mariah McLean



Birth: 2/27/93
Missing: 6/25/98
Age Now: 5 yrs
Race: Am. Ind.
Sex: Female
Hair: Brown
Eyes: Brown
Ht: 4'00"
Wt: 42 lbs

Missing From:
Billings
MT
United States

The children may be in the company of their non-custodial grandmother and great-grandmother. They may travel to the Kent, Washington area. Ateah may be in need of medical assistance. Mariah may be known by the nickname P.J.

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN
WWW.MISSINGKIDS.COM

ANYONE HAVING INFORMATION SHOULD CONTACT
The National Center for Missing and Exploited Children
1-800-843-5678 (1-800-THE-LOST) OR
Billings Police Department (Montana)
1-406-657-8460

Color courtesy of
Tektronix

Printing courtesy of
St. Labre Indian School

MONTANA SENATE
2001 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 1-17-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHRIS CHRISTIAENS	✓		
SEN. BOB DEPRATU	✓		
SEN. EVE FRANKLIN	✓		
SEN. DON HARGROVE	✓		
SEN. DAN HARRINGTON	✓		
SEN. ROYAL JOHNSON	✓		
SEN. JERRY O'NEIL	✓		
SEN. EMILY STONINGTON	✓		
SEN. FRED THOMAS			✓
SEN. DUANE GRIMES, VICE CHAIRMAN	✓		
SEN. AL BISHOP, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE 1-17-01

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 107 SB 116

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Robert McLean	477-8000	Marian & Heath McLean	116		
Donald Harr	248-8091	Mt. Psychiatric Assc'n. Mt. Medical Assc'n.	SB107	✓	
Bob Ross	252-5658	Billings Mental Health Center	SB107	✓	
Ann Lynch	442-7305	MyChildCare Helena	SB 116		
Barbara Mahugh		Montana Rape Network	SB 116		
Leslie B. Garvin	693-7037	Mental Disabilities Board of Visitors	SB107	✓	
BRIAN CAMERON	442-4934	League of Woman Voters of Montana	SB107	✓	
CHUCK HUNTER	444-9740	D.P.H.H.S	116	✓	
Ann Gilles	9-0626	Court Assessment	116	✓	
Sheryl Meador	9-0622	Ct Assessment	107	✓	
Rep Jeff Mangan		Self	SB116	X	
Erin McGowan	443-1570	MSPOA	SB107	✓	
Jani McCall	442-0216	Dear Bldg Clinic	SB107		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
SANDRA Michelish	458-9138	NAMI-MT	SB 107	X	
John W. Larson	523-4773	District Ct	107 116	X and X	
Jane Jelinski	442-5209	MA Co	SB 107	X	
Charlie McCarthy	442-4276	Mental Health Assoc of MT	SB107	X	
Bob Olsen	442-1911	MHA. Hospital Assn.	SB107	X	
Regina Waters		Senate	SB107	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Discussion:

SEN. GRIMES asked what is the difference between provisional practice permits and temporary practice permits. **Ms. Fox** said they were intended to look different, with the provisional clause for Canadian nurses and the temporary clause for cross-state nurses.

Vote: Motion **carried 10-0. SENATORS BISHOP, DEPRATU and JOHNSON** voted by proxy.

EXECUTIVE ACTION ON SB 116

SEN. STONINGTON said the subcommittee met and these were the amendments they agreed to present to the committee. **Ms. Fox** said amendments 1, 2, 5 and 9 had already been approved.

SEN. STONINGTON proposed **TO SEGREGATE THE AMENDMENTS OF SB 116.**

Motion: **SEN. STONINGTON MOVED TO APPROVE AMENDMENTS 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, AND 16, EXHIBIT(phs33a06) SB011606.asf.**

{Tape : 2; Side : A; Approx. Time Counter : 0}

Discussion:

Shirley Brown, DPPHS, said the issue was at what point does the judge decide and at what point does the department decide. It was determined the department shall determine the appropriate placement if there is no dispute. If there is a dispute the judge will decide on one of the two placements for consideration.

Vote: Motion **carried 10-0. SENATORS FRANKLIN, BISHOP, JOHNSON, and DEPRATU** voted by proxy.

Discussion:

SEN. STONINGTON said the other issue in this bill in whether children in daycare facilities should be investigated by Child Protective Services (CPS)or not. The way the bill is written, CPS would no longer be called to investigate any problems.

Motion: **SEN. STONINGTON** moved **TO STRIKE LINE 10 ON PAGE 3.**

Substitute Motion: **SEN. O'NEIL MADE A SUBSTITUTE MOTION TO SAY A PERSON PROVIDING CARE IN A DAYCARE FACILITY IF REQUESTED BY THE LICENSING AGENCY.**

Vote: The substitute Motion **failed 1-8 with O'Neil voting aye.**

{Tape : 2; Side : B; Approx. Time Counter : 0}

Vote: Motion **made by SEN. STONINGTON carried 9-1 with O'Neil voting no. SENATORS BISHOP, DEPRATU and JOHNSON voted by proxy.**

Motion/Vote: **SEN. STONINGTON** moved that **SB 116 DO PASS AS AMENDED. Motion carried 10-0. SENATORS BISHOP, DEPRATU and JOHNSON voted by proxy.**

SENATE PUBLIC HEALTH & WELFARE
EXHIBIT 6
DATE 2-9-01
BILL NO. SB116

Amendments to Senate Bill No. 116
1st Reading Copy

For the Senate Public Health, Welfare and Safety Committee

Prepared by Susan Byorth Fox
March 1, 2001 (2:46PM)

1. Title, line 8.
Following: "DEFINITIONS;"
Insert: "ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED;"

2. Title, line 12.
Following: "41-3-201,"
Insert: "41-3-202,"

3. Page 3, line 10.
Following: "~~facility;~~"
Insert: "(b) a person providing care in a day-care facility;"
Renumber: subsequent subsections

4. Page 6, line 7 through line 9.
Strike: subsection (24) in its entirety
Renumber: subsequent subsections

5. Page 6, line 29.
Strike: "(27)"
Insert: "(26)"

6. Page 9, line 7.
Following: line 6
Insert: **"Section 5.** Section 41-3-202, MCA, is amended to read:
"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall ~~promptly~~ conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any

other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-411.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office."

{*Internal References to 41-3-202:*
41-3-203 x *41-3-203 x* *41-3-204 x* *41-3-205 x*
50-16-603 x *50-20-212 x*}"

Renumber: subsequent sections

7. Page 9, line 18.
Strike: "of a child"

8. Page 18, lines 21 and 22.
Following: "admissible"
Strike: remainder of line 21 through line 22
Insert: "according to the Montana Rules of Evidence."

9. Page 25, line 5.
Strike: "31]"
Insert: "32]"

10. Page 31, line 13.
Following: "shall"
Strike: remainder of line 13
Insert: "require a criminal background investigation of each applicant by means of a fingerprint check by the Montana department of justice and the federal bureau of investigation."

11. Page 37, line 2.
Following: "41-3-301(1)"
Insert: "and in the absence of a dispute between the parties to the action regarding the appropriate placement"

12. Page 37, line 4.
Following: "care."
Insert: "The court shall settle any dispute between the parties

to an action regarding the appropriate placement."

13. Page 37, line 11.
Strike: "(1)"

14. Page 37, line 12.
Following: "stipulate"
Insert: "to any of the following"

15. Page 37, line 13 through line 24.
Strike: line 13 through line 24 in their entirety
Insert: "(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;
(2) a treatment plan, if the child has been adjudicated a youth in need of care; or
(3) the disposition."

16. Page 37, line 29.
Strike: "29 through 31]"
Insert: "30 through 32]"

17. Page 38, line 2.
Strike: "29 through 31]"
Insert: "30 through 32]"

- END -

MONTANA SENATE
2001 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 2-9-01

NAME	PRESENT	ABSENT	EXCUSED
SEN. CHRIS CHRISTIAENS	X		
SEN. BOB DEPRATU			X
SEN. EVE FRANKLIN	X		
SEN. DON HARGROVE	X		
SEN. DAN HARRINGTON	X		
SEN. ROYAL JOHNSON			X
SEN. JERRY O'NEIL	X		
SEN. EMILY STONINGTON	X		
SEN. FRED THOMAS			X
SEN. DUANE GRIMES, VICE CHAIRMAN	X		
SEN. AL BISHOP, CHAIRMAN			X

SEN:1997
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Public Health, Welfare and Safety** report that **Senate Bill 116** (first reading copy - white) **do pass as amended**.

Signed: _____
Senator Al Bishop, Chair

And, that such amendments read:

1. Title, line 8.
Following: "DEFINITIONS;"
Insert: "ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED;"

2. Title, line 12.
Following: "41-3-201,"
Insert: "41-3-202,"

3. Page 3, line 10.
Following: "~~facility;~~"
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Renumber: subsequent subsections

4. Page 6, line 7 through line 9.
Strike: subsection (24) in its entirety
Renumber: subsequent subsections

5. Page 6, line 29.
Strike: "(27)"
Insert: "(26)"

6. Page 9, line 7.
Following: line 6
Insert: **"Section 5.** Section 41-3-202, MCA, is amended to read:

Committee Vote:
Yes 10, No 0.

350902SC.sjo

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall ~~promptly~~ conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-411.

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(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

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(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the

child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office.""

Renumber: subsequent sections

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Strike: "of a child"

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Following: "admissible"
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Insert: "according to the Montana Rules of Evidence."

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Strike: "31]"
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10. Page 31, line 13.
Following: "shall"
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Following: "stipulate"
Insert: "to any of the following"

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Insert: "(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;
(2) a treatment plan, if the child has been adjudicated a youth in need of care; or
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16. Page 37, line 29.
Strike: "29 through 31]"
Insert: "30 through 32]"

17. Page 38, line 2.
Strike: "29 through 31]"
Insert: "30 through 32]"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 14, 2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 361, SB 116, SB 171, SB 290, 3/11/2001

Sen. McNutt said that he isn't an attorney, and in the Senate hearing there was some testimony given that was not given today, including by the trial lawyers. Since the hospital had no contact with the attorneys, the attorneys were not working in behalf of the hospital or other medical providers, and they should not be required to give up a portion of their bill that ultimately goes to the plaintiff that the attorney represents. He doesn't know the interactions with attorneys and what they do with their professional fees, but he was told that they will get paid. Whether it's in the bill or not, he was assured by several attorneys that they come first. Where the excitement is starting to come to the surface is that, and he doesn't know if it is because this case has been filed with the Supreme Court and that the petition is to look at a common fund pooling theory in Montana, there are some attorneys who are starting to withhold some funds on medical provider bills, and he thinks probably prematurely. That got the juices flowing, and that's why this bill is here. He thinks it is this legislature's responsibility to set the policy of what we're going to do in this state. He doesn't think that one case in North Dakota should be the guide for the other hundreds of cases in Montana that may arise. He provides medical insurance to his employees and last year his rates went up 34 percent. This cost shifting is taking place. Ultimately somebody has to pay the bill, and it's going to be those of us that are continually trying to pay for those insurance premiums and services that we want to see our employees or our families get. This bill is common sense. He doesn't think Montana wants to go down the road of becoming a common fund state. He doesn't think we're trying to degrade attorneys for the work they do. He doesn't think this is an unfunded mandate being placed on attorneys, as was stated in the Senate floor debate. The bill specifically says that attorneys will get paid first anyway. He asked for the committee's support of the bill. **Rep. Sliter** will carry the bill in the House. ***{Tape : 1; Side : B; Approx. Time Counter : 9.8 - 14.5}***

HEARING ON SB 116

Sponsor: **SEN. EMILY STONINGTON, SD 15, Bozeman**

Proponents: **Chuck Hunter, Administrator, Child and Family Services Division, DPHHS**
Ann Gilkey, Court Assessment Program
Colleen Murphy, Ex. Dir., Mt. Chapter, NASW

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, said this is an omnibus bill with many subjects related to child welfare and it impacts two major titles in our codes, Title 41 that covers child abuse and neglect and Title 42 which contains the adoption statutes. These titles are the ones that describe what our government does in protecting the lives of our children. These are extremely difficult circumstances, very emotional, very traumatic, very trying for everyone concerned. Our public agency is stretched extremely thin. They are underfunded probably about 40 percent from what they are told they should be doing and are unable to do because of the amount of funding we give them. That puts them between a rock and a hard place. We all want to respect the sanctity of our families, but we need to protect the safety of our children. That's a tough place to be in. What we end up doing with limited funds is that in order to protect the sanctity of the family, we make every effort up front to make sure that we are not taking a child out of the home that that is not appropriate for. We spend a lot of money doing that. Where we fall down is at the tail end of that and making sure that what happens to that child after we do take them out of the home is appropriate and caring and for the welfare of that child. She believes that we can't continue to do it this way. We can't continue to underfund an agency like this, a division like this, and keep on, which is what we do every session, saying we want you to do more with less. This bill, although it doesn't solve that problem, does try to address it in a few ways. One of the ways is an amendment that was put on in the Senate. The underlined language in the title of the bill is found on page 9, section 5, where the language has been inserted. This basically says that if the department is notified of a possible problem in a home, in a child care setting, that they can assess the seriousness of that problem and decide how far they need to go in solving it. Prior to this language being inserted, they had to take on every case that was reported to them and follow it through. This language starts to give them a tool to say they can't do it all, they can't do everything for every case. She supports this as a way to start trying to get our arms around controlling the whole arena of what we've asked the department to do. ***{Tape : 1; Side : B; Approx. Time Counter :14.5 - 20.0}***

Proponents' Testimony:

Chuck Hunter, Administrator, Child and Family Services Division, DPHHS, said they are the entity that deals with child welfare issues in Montana. He presented an analysis of each section of the bill with the reasons for each proposed change, a summary of the discussion that took place in the Senate and a description of the Senate amendments to the bill. He said that he would direct his testimony to the sections that are more substantive in nature and

more policy-oriented The process used in developing the bill began with the department going to eight or nine different communities around Montana and holding public meetings that were hosted by their local advisory councils, to which stakeholders were invited, including the public, people from the courts, foster families and other families who had been involved with their system, to talk about the system and what needed to be changed. Much of the bill is a result of the changes that were suggested at those meetings. The more substantive parts of the bills do the following things: they make a number of clarifications about terms, process and how things happen in the system. The bill shortens the time frame for investigative authorities that are issued by the courts for the department to be involved with a family, to find out what is going on, and to determine if abuse or neglect truly exists. It creates for the department the ability to license and define what a transitional living center is. It eliminates the kind of strange rule they've had in the department in the midst of private adoptions between parents and other private parties when parents want to put their kids up for adoption and there are no abuse and neglect issues. It clarifies the department's role and the role of the courts in making decisions about placement of children, and it gives the department the ability to take a more active role in assessing cases at the front end of the system. In section 1, page 2, lines 21 and 22 of the bill, they are asking to change the public policy section of the child abuse and neglect statute in the list of where they look to place when they have to take a child from a home and place the child in another setting. The public policy says they should look to extended families and they want to add the term of non-custodial parent as the first place where they should look. If there is abuse and neglect taking place in a home but the parents have been separated for some reason and that non-custodial parent is a good and fit place for the child, that ought to be the first place where they look if it's in the best interests of the child. Section 4, page 8, line 10 deals with mandatory reporters. There are certain professionals who deal with children routinely who are required as a matter of law to report when they see things with children that may be from abuse or neglect. These include the medical profession, school teachers, counselors and foster parents, and they have been in the list historically for mandatory reporting. The department wants to add those contractual providers who contract with the them directly to provide services to kids who are subjected to abuse and neglect. Oftentimes these are providers who are working for the department, going into the home of families and working with families to try to rectify conditions that have led to abuse and neglect. They're on the department's payroll and are often in a direct place where they can see what is taking place with the kids. Since they are on the state payroll and are working for the protection of kids, it is appropriate that they become part of the mandatory reporting

network. Referring to section 5, page 9, lines 13 through 15, he said that the department historically has been responsible for investigating each and every referral that they receive, and they receive some 10,000 of those in a given year. They know that many of those referrals do not really need to be investigated, because there isn't really abuse and neglect going on. An example would be couples who are separating and involved in a custody dispute, and they make allegations, one against the other, as a means of leveraging where they are in the dispute. The department determines after the first few reports that nothing is going on there, and they'd like the ability to not have to go out and investigate each and every time once they've concluded that there is no risk to the child. They often get reports that are clear from the facts that there isn't an abusive situation, and they'd like to be able to screen them. It would help them manage their workload and be less intrusive in families where intrusion is not warranted. Legislators often hear from families about department involvement in their lives, and the department is held by the confidentiality provisions not to share any details of the case. They'd like to be able to provide information on the case, and Section 6, page 12 would authorize the department to share some details about the investigation and how the case was processed, although not details that are personal about the family or children. At least they would be able to assure the legislators that the case was being handled properly. Section 9, page 19, lines 8 through 14 deals with the kinds of relief that a court may grant to the department as they're working with families.- 7.5 Section 9, page 19, lines 23 and 24, deals with temporary investigative authority, which the court provides to the department to go into a home and investigate whether there is abuse and neglect going on in there. Prior to the previous session, TIA's could be extended at 90-day intervals time after time after time, and many kids stayed out there in state custody under this arrangement. Last session there was a bill to limit it to two 90-day periods, and this bill proposes that it be limited to one 90-day period. Section 13, page 26 deals with the long-term placement of children in foster care. There has been a lot of effort and emphasis during the last couple of years placed on trying to put kids in permanent homes with permanent attachments to families earlier on, but there are still circumstances where for some children, that permanent home is not going to take place or should not take place. Heretofore there's been a restriction of not allowing a long-term foster care setting to be that permanent setting until the child is age 12 or over. They've found some circumstances where long-term placement is more appropriate, so they want to open the door to make that a possibility. Lines 8and 9 include the requirement that there must be a judicial finding made that other more permanent options have been considered and looked at, and the court has found them not to be in the best interests of that child. The department wants a specific finding

from the court before they go there for kids under age 12. Sections 17 and 18 on pages 29 and 30 contain changes that would allow the department to define and license transitional living centers. There are two of these centers in Montana, and they are designed to prepare older teens, typically 16-18, for moving from foster care into adult life as independent individuals. They want to expand the number of centers in the years ahead. The federal government has doubled the amount of money that Montana will receive to provide these services to kids in that age range. Right now there is no specific licensing authority for transitional living centers, there is no particular definition, and the two that are out there are living on kind of cobbled-together licenses that really don't describe the kind of business they're in. Referring to sections 21 to 23, pages 33 and 34, the department for some time has been in a strange position in private adoptions, where a private family is choosing to put their child up for adoption to some other private party, and there is no abuse and neglect. The department has had the strange rule of entering into a contract to provide for the social history to be done by a licensed social worker or a child placement agency, and the legislature has granted authority to licensed social workers to do this, so it is a mystery to him why the department would need to be involved in the process. It is a private transaction between private parties. There is no need for the department's involvement, and it has contributed to their workload with no benefit to them or to the families. Section 30, pages 38 and 39 deals with the placement authority of the department, which was the subject of quite a bit of discussion in the Senate. It clarifies that the department has the statutory responsibility to determine the placement of children and also specifies that kids cannot be placed in detention facilities. It also provides that when there's a dispute about what placement is appropriate, it is the court's role to resolve that. **EXHIBIT(huh58a02)** ***{Tape : 1; Side : B; Approx. Time Counter : 20 - 30} {Tape : 2; Side : A; Approx. Time Counter : 0 - 7.5}***

Ann Gilkey, Court Assessment Program, said that with the Senate amendments, they support the bill.***{Tape : 2; Side : A; Approx. Time Counter : 7.5 - 8.1}***

Colleen Murphy, Ex. Dir., Mt. Chapter of the Nat. Assn. of Social Workers, said they support the bill. It is carefully crafted and dovetails carefully with some of the programs in HB 2 in the child and family services budget. Things are working together and Mr. Hunter is doing a tremendous job of tightening up the way the state does business in child and family services. She thinks taking the perpetrator out of the home is an innovative idea. Raising the priority of placing children with the non-custodial parent or another family also will do a lot to help with the problem of "foster care drift," which is once kids get in the system, they

drift around and can't get a permanent place. The damage that's done by abuse and neglect is significant to children, and the secondary damage occurs when they are moved all over through the system for years and years, and pretty soon they give up. ***{Tape : 2; Side : A; Approx. Time Counter : 8.1 - 9.5}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Newman asked the sponsor about the changes in section 5, page 9, lines 12 through 16 of the bill. He thinks one of the problems with an omnibus bill like this is that when substantial changes are made to many different sections of law, he can always find one in which he has a bone to pick. **Sen. Stonington** said that provision came in after she had agreed to carry the bill. It came in as an element of the discussion around the question of how we can stop continuing to ask an agency to do more with less. There has to be a way to give them a tool to say, we can go this far and then we can't go any further. That's what this begins to do. It doesn't go as far as it needs to. This agency is 40 percent underfunded. They requested 24 new FTEs to just be able to get their job done. They were given four. **Rep. Newman** asked if it is good public policy, upon receipt of a report of child abuse, to reduce our government response from an investigation of the alleged abuse to an assessment of whether or not an investigation should occur. **Sen. Stonington** said we are drawing the line here, and it is a fine line to draw. Good public policy would say we do what we say we'll do. Her preference would be to fund the appropriate amount of work, but we aren't, so is it better public policy to say we'll do something and then not be able to afford to do it. We have to make some of these hard decisions, and that is our role as government.

Rep. Noennig asked **Mr. Hunter** if the language on page 8, line 10 is too broad. It refers to an employee of an entity that contracts with the department to provide direct services to children, and he didn't know what direct services are and also wondered if Mr. Hunter was comfortable with everybody who does anything the department contracts to do being covered under this provision. **Mr. Hunter** said that had been discussed at length within the department, including whether it should be limited to the division only, but direct service means that the providers are seeing children directly, and if they see something that looks like abuse and neglect, they should report it.

Rep. Noennig asked about the same thing Rep. Newman had asked about on page 9, and said it seemed like there wasn't any time frame left

in there because the bill deletes the word "promptly." He wondered if that word should be inserted on line 13 before the word "assess" so the department could at least react quickly. **Mr. Hunter** said they would be happy with that amendment. They're in the business of protecting kids and don't want to suggest in any way that they want to be less active and less prompt in doing this. They want to weed out the things that really have no benefit to children in the work they're doing. **Rep. Noennig** asked if they are spending a lot of FTE time investigating claims that they know are false and if it is a big cost factor. **Mr. Hunter** said they are spending a lot of time, and they are thorough in their investigations. They have looked at other states who have heavy workloads and inadequate funding, and some of them will send someone out within 24 hours to make a cut and dried assessment of what's going on in the family. They may find that, based on the assessment, they need to assign services to the families but don't need to go on with an investigation. The department wants to look at each case and assess the appropriate activity based on the circumstances they find. In HB 2 they have a proposal that would allow them to centralize the intake process, which would include a consistent way of screening information, collecting data and putting it back out to the field for investigation.

Rep. Noennig asked about changes made on page 20, lines 14 through 16 regarding rules of evidence and if they had been coordinated with a bill by Sen. Halligan that concerned hearsay statements by children. **Mr. Hunter** said that had been discussed and whether some new kind of specific rule should be created for hearsay on child abuse and neglect. In working with primarily Judge Larson and some other judges, the judges convinced the department that the Montana Rules of Evidence right now specify how that evidence can be allowed in and when it shouldn't be allowed in. **Rep. Noennig** asked if the bill should include guidelines for licensing requirements for transitional living programs. **Mr. Hunter** said guidelines for licensing the other facilities listed in this section are contained in administrative rules, and they'd propose the same for this.

Rep. Noennig asked about the amendments added to new section 32 on page 39, and said the one on line 23 dealing with stipulations didn't make much sense to him. **Mr. Hunter** explained that language was adopted last session that said a treatment plan had to be court ordered, but they've found that sometimes parents will stipulate to things in a treatment plan and the stipulation will be adopted but there was never a finding by the court that there truly was abuse and neglect; it was never adjudicated. If parents don't follow through on the stipulated treatment plan, the department has to move to some other option. Since there had been no adjudication, the department has to go all the way back to the beginning. The amendments to the bill say that if parents want to stipulate to

things and have the department move forward with the treatment plan, it can be done if the parents stipulate that there was abuse and neglect. If they won't go through the adjudication process but want to stipulate to those things, it will be contained in the stipulation. The department worked with judges on this language. **Rep. Noennig** said he still didn't understand what line 23 means. **Mr. Hunter** said it means that the child meets the definition of a youth in need of care, and the evidentiary standard used is preponderance of the evidence.

Rep. Facey asked **Mr. Hunter** if the 10,000 allegations per year of abuse or neglect rounds out to about 30 a day. **Mr. Hunter** said yes, that's pretty close. **Rep. Facey** asked how long it takes from the time a report is received for the state worker to start and complete the investigation. **Mr. Hunter** said it depends upon the nature of the allegation. If it seems that the child is at risk, they investigate immediately. Cases lower on the priority list in terms of risk may take a couple of days to investigate. **Rep. Facey** asked where the workers are located. **Mr. Hunter** said there are 53 separate locations throughout the state. There are more workers in the large metropolitan areas, but there are many single workers in the small towns. There are some places in some counties without a resident worker, and itinerant services are provided. **Rep. Facey** asked if the department has adopted a triage system in case this bill passes, or will they do it between now and the effective date. **Mr. Hunter** said they have investigated a couple of triage systems and have piloted one in Gallatin County. The proposed centralized intake system would include some triage components. That would be done within a nine month time frame if they got funding for it. **Rep. Facey** asked if the state is facing a liability issue now or would if the bill passes. **Mr. Hunter** said the bill wouldn't increase or decrease liability. As the entity responsible for investigating these reports, the department has liability today.

Rep. Schrumpf asked **Mr. Hunter** for more information about the transitional living program for youth aged 16-21 talked about on page 29, line 23. **Mr. Hunter** said they are set up as facilities in which there is supervised living in a center or group of apartments where the youth live as individuals but under the supervision of an adult. **Rep. Schrumpf** asked how long it takes for a youth to adjust to this situation so they feel they can enter society and the work force and feel comfortable about living alone. **Mr. Hunter** said it varies based on the individual but averages 12-18 months. **Rep. Schrumpf** asked where the two homes are located. **Mr. Hunter** said there is one in Missoula and one in Great Falls, and they would like to expand to four or five other locations.

Rep. Schmidt asked **Mr. Hunter** if he was concerned about removing the word "promptly" on page 9, line 16 and whether there would be any liability or if it is covered in other sections. **Mr. Hunter** said he wasn't concerned because he knew the workers would conduct the investigations promptly when the circumstances warrant. He would agree with the suggestion to add the word "promptly" in front of the word "assess." **Rep. Schmidt** asked **Mr. Hunter** if cuts had been made in HB 2 in the child abuse area. **Mr. Hunter** said in the Racicot budget the department had funding for 26 new workers and a lot of new in-home services that would be contracted. Those were reduced in the Martz budget to the proportional amount that other budgets were reduced, so they were reduced to 6 workers, and from a million dollars of new in-home services down to about $200,000.

Rep. Newman asked **Mr. Hunter** how the workers in the field would deal with section 5 and if he believed that adding the assessment level before the investigative level is a good statement of public policy and something that should be added to the statute rather than leaving the language the way it is, recognizing that some investigations take a short amount of time and some take a great deal of time. **Mr. Hunter** said he believes it is a good statement of public policy to say that the department ought to be using its professional judgment in each and every case in deciding how it ought to conduct those cases. That should be based upon professional expertise and looking at the case and looking at the facts and making a case by case judgment. That is where he thinks this takes us. It gives him the ability to control at the front end what comes into the system and what doesn't as opposed to just throwing the doors open wide and saying any phone call they get, they'll go out on.

Rep. Noennig asked **Mr. Hunter** to address the suggestion of leaving in the word "promptly" on page 9 as well as inserting it before the word "assessment" as had been suggested previously. **Mr. Hunter** said he thinks that hinders a little bit what they are trying to accomplish. He concurs that any time they get a referral, they ought to look at it right away and assess it when they get it to determine its nature. If they're doing assessments, there may be a case where an investigation isn't warranted for some period of time. He thinks they could live with leaving in the word "promptly" but he doesn't think it grants the department the full kind of flexible use of judgment they're trying to achieve.

Rep. Lee asked **Mr. Hunter** how they do an assessment and what steps they take. **Mr. Hunter** said that if this were put into the code and they were operating under the statute, they would need to develop a more formal assessment method than they have today. Today what comes in over the phone or by letter is typically screened according to a formal or informal risk assessment, and the

department uses several of those that are written in a grid form. There are other more informal methods used by workers who have been in the system for a number of years and really know their way around this subject. If they're going to an assessment like this, a triage system, and centralized intake, they will develop a very formal process by which these things will be assessed and subsequently assigned out to the field.

Rep. Facey said there's a fish and game statute that states if a landowner reports a damage to their property by wildlife, FWP must respond within 48 hours, and they told him that if they make a phone call to the landowner, that is considered a response and they started their response within 48 hours. He asked **Mr. Hunter** if that would be appropriate for his department. **Mr. Hunter** said that existing language that isn't being changed states that the worker shall promptly conduct a thorough investigation into the circumstances. He is saying that they'll do an assessment and if an investigation is warranted, they'll do that same thorough investigation that they've always done. Going to the 48 hour response or a shorter response, he'd like to say that might be sufficient in a number of cases, but when they feel like an investigation is going to be done, they are really into a thorough investigation where they talk to the family, the parents, and the child. ***{Tape : 2; Side : A; Approx. Time Counter : 9.5 - 30} {Tape : 2; Side : B; Approx. Time Counter : 0 - 12.5}***

Closing by Sponsor:

Rep. Stonington said this is a difficult arena, and she appreciated the very good, probing questions. She said that on page 3, line 13, the Senate had amended back in something the initial bill had taken out, to say that the agency is responsible for investigating reports of child abuse or neglect in a day care center. They were inundated with e-mails. The department was willing to amend that back in and say they would still take it on. They were going to say it should be a licensing issue and if there is a problem, then it should be a law enforcement issue, but they'll go ahead and take it back on again. The compromise was the wording that was put in on page 9, to try to give them greater authority to assess rather than to have to thoroughly investigate every single case. She hoped the committee would give them the leeway to manage this well. ***{Tape : 2; Side : B; Approx. Time Counter : 12.5 - 14.3}***

HEARING ON SB 171

Sponsor: SEN. BILL GLASER, SD 8, Huntley

EX 2
3/14/01
SB116

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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For the House Human Services Committee

Senate Bill No. 116
Introduced by E. Stonington

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT, YOUTH IN NEED OF CARE, ADOPTION, AND FOSTER CHILDREN; REVISING PROVISIONS RELATING TO PLACEMENT AND DISPOSITION OF ABUSED AND NEGLECTED YOUTH; PROVIDING DEFINITIONS; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSESS REPORTS OF ABUSE OR NEGLECT TO DETERMINE ACTION REQUIRED; PROVIDING THAT THE MONTANA RULES OF EVIDENCE APPLY TO PROCEEDINGS; PROVIDING FOR A BACKGROUND CHECK ON A PERSON SEEKING A YOUTH FOSTER HOME LICENSE; GRANTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY FOR PURPOSES OF LAWS RELATING TO ABUSED AND NEGLECTED YOUTH AND CONTAINING A REPEALER

Section by Section Analysis of SB 116:

SB 116 contains the amendments the Division proposes for Title 41, Chapter 3, Child Abuse and Neglect, and Title 42, Adoption. This analysis also includes the amendments to SB 116 approved by the Senate. Those amendments are discussed in bold after each amended section.

TITLE 41, CHAPTER 3, CHILD ABUSE AND NEGLECT

Section 1. 41-3-101. Declaration of policy. This section clarifies that, when the department must remove a child from his/her home, the non-custodial parent should be considered as the first placement option when it is in the child's best interests. This amendment codifies division policy requiring social workers to consider the noncustodial parent as the first placement option, absent good cause to the contrary, for a child when the child must be removed from the custodial parent because of child abuse/neglect.

Section 2. 41-3-102. Definitions. This section amends existing definitions and adds new terms to the definition section as follows:

a) Remove child care providers from the list of persons responsible for a child's care. The division must investigate suspected abuse/neglect if the alleged perpetrator is a "a person responsible for the child's welfare". The definition currently includes child care providers as "a person responsible for the child's welfare". The division proposed this amendment to clarify that social workers investigate child abuse in *residential* settings and that child abuse/neglect in a child care setting is a licensing issue. **The Senate did not concur with this proposal. The Senate chose to include child care providers in the list of persons responsible for a child's welfare. The Senate Public Health, Welfare and Safety Committee, when**

CHILDREN AND FAMILY PROGRAMS

discussing this proposal, decided that social workers are the most appropriate investigators of allegations of child abuse/neglect in child care settings.

b) Add the following definitions:

Concurrent planning means to work toward reunification of the child with the family while, at the same time, developing and implementing an alternative permanent plan. This definition reflects the reference to concurrent placement in current statute (which is also clarified in this bill) and the reference in the Adoption and Safe Families Act of 1997 (ASFA). Adding a definition of concurrent planning also reflects current practice in that, because of the time frames, social workers must be working on reuniting the family and developing an alternative plan at the same time.

Family group conference means a meeting which involves family members in either developing treatment plans or making placement decisions or both. Under the confidentiality statute, a social worker may disclose case information during a family group conference. The term needs to be defined to clarify the entity to which social workers may disclose information and to put families on notice that the division will be convening and conducting family group conferences to assist in planning for the child.

Permanent placement means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches the age of 18. This definition mirrors the definition contained in the federal Adoption and Safe Families Act of 1997 and informs parents of Montana's definition of a permanent placement.

Physical neglect means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, appropriate clothing related to weather conditions or failure to provide cleanliness and general supervision or both. This definition is "housekeeping" in that social workers investigate and substantiate the occurrence of physical neglect but the statute contains no definition of the term.

Substantiated child abuse or neglect means upon investigation, the investigating person has determined that the facts showing that child abuse or neglect occurred are more convincing than the facts offered to show the child abuse or neglect did not occur. This definition is necessary because most social worker action is based on substantiating child abuse/neglect. Because substantiation of abuse/neglect is so integral to child protective services, the term should be statutorily defined. **The Senate did not concur with this proposal. This proposal was discussed during the meeting of the Senate Public Health, Welfare and Safety Subcommittee appointed to consider amendments to SB 116. The proposed definition was deleted because, although the term is used in social work practice, Title 41, chapter 3, does not contain a reference to substantiated child abuse or neglect.**

c) Add "abandoned" to the definition of "youth in need of care" to reflect current practice and to remedy an existing oversight in the statute.

Section 3. 41-3-106. Prosecution of offenders. This section clarifies that the filing of criminal charges does not toll proceedings under the abuse/neglect statute. Currently some county attorneys will not proceed with the child abuse/neglect proceeding if criminal charges are pending. When this occurs, children remain in foster care longer than necessary.

Section 4. 41-3-201. Reports. This section adds employees of entities that contract with the department to provide direct services to children to the list of mandatory reporters. The division contracts with in-home services providers who are in a position to identify suspected abuse and neglect. Frequently these providers are reluctant to report suspected abuse and neglect because of concerns that reporting the alleged maltreatment will impact the relationship between the provider and the family. The division would like these providers added to the list of mandatory reporters to clarify that they must report suspected child abuse/neglect. Also, the position of the division is that providers of services funded by the division should be required to report suspected child abuse/neglect.

Section 5. 41-3-202. Action on reporting. Section 5 reflects an amendment to the original version of SB 116 approved by the Senate. The department requested this amendment. This amendment provides that the department may assess the information contained in a report of suspected child abuse/neglect and make a determination regarding the level of response required and the timeframe within which action must be initiated. This amendment will allow the department to begin to manage social worker caseloads.

Section 6. 41-3-205. Confidentiality - disclosure exceptions. This section amends the confidentiality statute as follows:

a) Clarify that the evaluations considered CPS records are the child's evaluations. In 1999, the confidentiality statute was amended to list documents, including evaluations, which comprise the division's records. The broad category of evaluations resulted in confusion regarding the appropriate disclosure of parental evaluation reports created by other professionals. By amending the statute to clarify that only evaluations of the child who is the subject of the proceedings are part of the official record of the department, requests for release of parental evaluations could be referred back to the professional who produced the document. **This amendment was discussed during the meeting of the Senate Public Health, Welfare and Safety Subcommittee appointed to consider amendments to SB 116. This proposal was deleted based, in part, on the argument that the proposal would limit the department's ability to disclose the parent's evaluations to Foster Care Review Committees and Citizen Review Boards.**

b) Allow release of information to members of Congress and state legislators. This amendment will allow the division to respond to requests from members of Congress and state legislators regarding the division's response on those cases.

c) Clarify that the department cannot release medical records if they are covered by state or federal disclosure limitations. Federal and state statute or regulation govern, at a minimum, release of medical records, drug/alcohol evaluations, and information regarding receipt of drug/alcohol services. This amendment clarifies that the division cannot release records if the release is restricted by federal or state statute or regulation.

Section 7. 41-3-401. Abuse and neglect petitions. This section contains "housekeeping" amendments which clarify that, except where otherwise provided, the Rules of Civil Procedure and the Rules of Evidence apply. The amendment also removes the reference to issuance of citation (archaic language).

Section 8. 41-3-402. Petition for temporary investigative authority and protective services. This section contains "housekeeping" amendments to clarify that the affidavit required under this part should be signed by the department, not the attorney handling the case. This amendment also removes reference to "report" for consistency with other provisions which require an affidavit, not a report.

Section 9. 41-3-403. Order for immediate protection of youth. This section contains a "housekeeping" amendment which replaces "Rules of Civil Procedure" with "Rules of Evidence" to reference the correct rules. This section also contains the following amendments:

a) Clarify that the relief granted under a TIA does not constitute a court-approved treatment plan. Title 41, Chapter 3, contains a provision which allows the court to approve a treatment plan under specific circumstances (which are amended under this legislation). The reliefs granted under a temporary investigative authority do not meet the statutory requirements of a treatment plan; however, some courts confuse these reliefs with a treatment plan to be approved by the court. This confusion should be corrected by amending the statute to clarify the TIA relief is not a court-approved treatment plan.

b) Clarify that, under an order for immediate protection, the court may grant the department the right to place the child in temporary medical or out-of-home care, including, but not limited to care provided by a noncustodial parent, kinship or foster family, group home or institution. This amendment reflects practice in that the first placement options considered by the social worker are either the noncustodial parent or extended family.

c) Add to the list of relief the court may grant under a TIA the requirement that the perpetrator leave the home, not the child. This would prevent the out-of-home placement of the child by leaving the child with the non-offending parent if the non-offending parent can protect the child from the offending parent.

d) Add to the list of relief the court may grant under a TIA the requirement that the parent provide the name and address of the non-custodial parent and that the parent(s) provide names and addresses of extended family members who may be considered as placement options for the child. This reflects current practice and will require that the parent(s) assist the social worker in locating the noncustodial parent and appropriate extended family members if the child must be placed in out-of-home care.

e) Add a sentence to the end of (5) to specify that the department may use concurrent planning. This amendment provides specific statutory authority to the division to develop an alternate permanent placement for the child at the same the department is providing reunification services in case reunification services are not successful. Concurrent planning should reduce the length of time the child is in foster care if the child cannot be reunited with his/her parents.

f) Limit the TIA to 90 days with no extensions. This amendment will result in children achieving permanency more quickly.

Section 10. 41-3-404. Adjudicatory hearing - temporary disposition. This section provided that hearsay evidence of statements made by the child are admissible during the hearing if offered by a department social worker or a professional deemed expert by the court. Under current statute, hearsay evidence of statements made by the child are admissible during the show cause hearing for a TIA. This amendment would have expanded this hearsay exception to the adjudicatory hearing. The division has advised social workers and is working with county attorneys to by-pass the TIA and file for temporary legal custody in the initial petition if the evidence supports the action. Under current statute, if the first hearing held on the petition is an adjudicatory hearing, hearsay statements by the child are not admissible. This amendment would have protected children from testifying in court against their parents by allowing either the social worker or another professional to testify regarding statements made by the child regarding the abuse/neglect. **This proposal was discussed extensively during the meeting of the Senate Public Health, Welfare and Safety Subcommittee appointed to consider amendments to SB 116. This proposal was amended to clarify that hearsay evidence of statements made by the child are admissible in accordance with the Montana Rules of Evidence. According to a District Court Judge who was present during the discussion on this amendment, compliance with the Montana Rules of Evidence should allow most statements made by the child to be admissible.**

Section 11. 41-3-406. Dispositional hearing - temporary legal custody. This section prevents the court from ordering care and treatment of a child which will require expenditure of funds unless the department consents and informs the court that the resources are available. This limitation on the courts is necessary because some courts order the department to pay for specific treatment without notice to the division or providing the division the opportunity to object prior to issuance of the order.

This section also requires a specific finding that the extension is in the best interests of the child if the court allows temporary legal custody to be extended more than 6 months. Current statute appears to limit the extension of temporary legal custody to only one six-month extension. In some cases this limitation is counterproductive in that the parents may be able to rectify the behavior which resulted in the abuse/neglect but they may not be able to complete the process within the 12 months allowed for temporary legal custody. This amendment allows for further extension if the court finds the extension in the child's best interest.

Section 12. 41-3-411. Contributions by parents or guardians for youth's care. This section clarifies that the department can collect parental contributions if the child is in the physical or legal custody of the department. The statute currently states the court shall examine the financial ability of the parent to pay a contribution if the child is in the custody of the department. Many county attorneys interpret this to require that the child be in the temporary legal custody of the department. The amendment clarifies that the court can examine the financial ability of the parent at the TIA stage.

Section 13. 41-3-412. Permanency plan hearing. This section contains "housekeeping" language which clarifies that the reports submitted to the court must address the mental and physical health of the child, not the mental, physical, and psychological health. The Legislative

Council opined that mental and psychological health are the same so the word "psychological" has been deleted. This section also contains the following amendments:

a) Change all references to "long-term custody" to "planned permanent living arrangement". The term "long-term custody" is disfavored by ASFA - the change reflects the intent of ASFA to assure that all placements other than reunification, guardianship, placement with a fit and willing relative, and adoption are planned placements which do not occur by default.

b) Add placement with a fit and willing relative to the conditions under which the court can approve a planned permanent living arrangement. This amendment reflects ASFA and is consistent with 41-3-604 which provides that the department is not required to file a petition to terminate parental rights if the child is placed with a relative.

c) Remove the age limit from the list of conditions which must be met before the court can approve a planned permanent living arrangement. This amendment is in response to social worker concerns that an option other than adoption must be available to children under 12 if in the best interests of the child.

d) Require that the court must make a specific finding that other, more permanent options are not appropriate or in the child's best interests before the court can approve a planned permanent living arrangement. This amendment provides protection for children under 12 for whom the permanency plan may be a planned permanent living arrangement.

Section 14. 41-3-413. Review hearing. This section requires that the review hearing be held every 12 months until the permanent placement for the child is finalized. By adding this requirement, the statute is ASFA compliant regarding court oversight of division efforts to finalize the permanent plan.

Section 15. 41-3-420. Treatment plan - contents - changes. This section amends the language to clarify that the court may order a treatment plan if the parents admit the allegations in the petition, the parents stipulate that the child is abused/neglected, or upon an adjudication that the child is a youth in need of care. This amendment is necessary because, under current practice, parents stipulate to the provisions contained in the treatment plan but do not stipulate to the abuse/neglect. The stipulation and treatment plan are submitted to the court. In some jurisdictions, stipulations replace parent(s) appearance in court and the case proceeds on stipulation until a petition to terminate parental rights is filed. As a result, often the child is not adjudicated a youth in need of care until the termination phase. This extends the time the child remains in care because parents frequently do not understand that non-compliance with the treatment plan to which they stipulated can result in the court terminating parental rights. This amendment and the new section on stipulations should resolve that issue.

Section 16. 41-3-604. When petition to terminate parental rights required. This section clarifies that the 15 months for filing the termination petition starts when the child is in the physical custody of the state. Some attorneys interpret the statute to mean that the petition must be filed if the child has been in the legal custody of the state for 15 of the most recent 22 months. ASFA requires that the petition be filed when the child has actually been in the physical care of the state for 15 of the most recent 22 months so the amendment will assure ASFA compliance.

This section also clarifies that, if an exception to filing the termination petition exists, the court should either grant an extension for temporary legal custody, approve a planned permanent living arrangement or dismiss the petition. This amendment notifies county attorneys that, if an exception to filing the termination petition exists, the division still must have a legal basis for the child to remain in care under the custody of the state.

Section 17. 41-3-1102. Definitions (Youth Residential Services). This section defines "transitional living program" as a program with the goal of self-sufficiency in which supervision of the living arrangement of a youth 16 to 21 years of age is provided and adds "transitional living program" to the definition of "youth care facility." The Chafee Foster Care Independence Program created by The Foster Care Independence Act of 1999 expands funding for youth transitioning out of foster care. The division has identified the need for transitional living programs as a placement option for youth who require supervision in their living arrangement but do not require the level of supervision provided in foster care.

Section 18. 41-3-1103. Powers and duties of department. This section adds "transitional living programs" to the list of services for which the department administers state and federal funds and grants the department licensing authority for transitional living programs. Circa 1998, the division developed licensing rules for transitional living programs but, according to the Chief Legislative Counsel, no authority existed to develop the rules. Because of time constraints, the division could not incorporate the authority into legislation for the 1999 Session. This is the division's first opportunity to request legislative authority to develop and regulate transitional living programs statewide since receiving the opinion of the Legislative Counsel.

This section deletes youth assessment centers from the list of programs for which the department administers state and federal funds. The funds for youth assessment centers are administered by the Department of Corrections, not the department. In addition, the department administers funds for youths in need of care and a youth in need of care cannot be placed in a youth assessment center.

This section also contains "housekeeping" language to clarify that the division assumes responsibility for children in the physical/legal custody of the department and that responsibility is for room, board, clothing and transportation but does not include treatment. Treatment services are funded by a source other than the foster care budget.

Finally, this section allows the division to continue payments for youth up to age 21 who remain in care. Because many foster children do not complete high school until after their 18th birthday, this amendment will provide the division with statutory authority to make foster care payments until the child graduates from high school.

Section 19. 41-3-1115. Foster care review committee. This section removes antiquated language and clarifies that ASFA time frames must be met.

Section 20. 41-3-1142. Issuance of license - authority of issuing agency - rules. This section adds the requirement that applicants for youth foster home licenses must submit to a criminal and child protection background check. Criminal records checks for foster parents are required under ASFA so this amendment will make Montana ASFA compliant. Currently the division's authority to conduct the background check exists only in policy. **The amendment to the original version was requested by the department. Prior to the hearing in the Senate**

Public Health, Welfare and Safety Committee, the department received a recommendation from the Justice Department that the amended language be included to assure compliance with federal regulations governing the use of a fingerprint check as part of a criminal background investigation.

TITLE 42, ADOPTION

Section 21. 42-3-202. Initiation of preplacement evaluation - who conducts evaluation - payment of fees. This section removes the division from involvement in preplacement evaluations for direct parental placements. Currently, the statute requires that preplacement evaluations for direct parental placement adoptions be conducted by either the department, a licensed child-placing agency, or a licensed social worker who contracts with the department. The division's position is that the division should not be involved in contracting with private social workers to provide preplacement evaluation services to prospective adoptive parents who are not adopting children in the custody of the state. This amendment clarifies that either licensed social workers or licensed child-placing agencies shall conduct preplacement evaluations for direct parental placement adoptions and that the division has no role in them.

Section 22. 42-3-301. Requirement for preplacement evaluation. This section is "housekeeping" and clarifies that preplacement evaluations must be conducted on families with whom the department or licensed child-placing agencies place children adoptively in accordance with the preplacement evaluation procedures in Title 42, chapter 3, part 2.

Section 23. 42-4-112. Period for postplacement supervision. This section clarifies that the department does not provide postplacement supervision for direct parental placements. This is a companion section to Section 23.

Section 24. 42-5-101. Petition for adoption. This section contains "housekeeping" amendments which require that adoption petitions be verified, not notarized, require that the child's guardian ad litem (if applicable) receive a copy of the adoption petition, and clarify that the Rules of Civil Procedure apply except where modified.

Section 25. 42-5-103. Notice of hearing. This section contains "housekeeping" amendments which require that the child's guardian ad litem (if applicable) receive notice of the hearing on the adoption petition and which remove reference to Rules of Civil Procedure.

Sections 26, 27, 28 and 29. 42-8-101 et seq - Licensing of Child Placement Agency. One of these sections deletes the word "entice" from the definition of soliciting. The division recommends this amendment because the term "entice" seems to have a negative connotation when applied to the relinquishment of a child by a birth parent.

These sections also clarify that child placement agencies may provide foster care services in addition to adoptive placement services. These amendments reflect practice in that several child placement agencies make both adoptive and foster care placements.

Section 30. New Section. Limitation on placement. This section clarifies that the department makes placement decisions, not the court. The division is requesting this amendment for two reasons: a) Some courts order placements of children which are

inconsistent with the recommendations/available funding of the division; and b) Federal regulations require that the division have care and placement responsibility for the child. When the court orders a specific placement, the court moves out of the oversight function contemplated by the federal regulations and the division is unable to access federal funding for the child. **This section was discussed extensively during the meeting of the Senate Public Health, Welfare and Safety Subcommittee appointed to consider amendments to SB 116. Prior to the subcommittee meeting, the division requested clarification from the Administration for Children and Families on the federal regulations. The amendment reflects the clarification that the court's role in determining the child's placement is to resolve disputes between the parties to the action and, in the absence of a dispute between the parties to the action, the department makes the placement decision.**

Section 31. New Section. Rulemaking authority. This section grants rulemaking authority to the department to administer the requirements of Title 41, chapter 3, Child Abuse and Neglect. Currently, the only rulemaking authority in Title 41, chapter 3, is for youth residential services and for preparing and processing reports and in making investigations.

Section 32. New Section. Stipulations. This section clarifies that the parents stipulate that their child is abused/ neglected, not that they will do the treatment plan and clarifies when the parents may stipulate. This amendment, with the amendment to 41-3-420 (treatment plans) will resolve the issue of lack of adjudication of the child until the termination of parental rights phase of the proceeding. **The amendment to this section makes this section on stipulations consistent with the new section on stipulations contained in SB 170, an act revising the child abuse and neglect statute.**

Section 32. New Section. Repealer. This section repeals the following:

a) 41-3-1014: Dispositional review hearing by district court because the disposition review hearing was replaced by the permanency planning hearing and this provision should have been repealed in either 1997 or 1999;

b) 41-3-1104: Youth facilities because this provision refers to the Department of Corrections and should have been repealed when the Youth Court Act was amended in either 1997 or 1999; and

c) 41-3-1114: Continuing jurisdiction of youth court because this provision refers to delinquent youth and youth in need of intervention and belongs in the Youth Court Act if applicable.

HOUSE OF REPRESENTATIVE

ROLL CALL

HEALTH AND HUMAN SERVICES COMMITTEE

DATE 3/14/01

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL THOMAS, CHAIR	✓		
REP. ROY BROWN, V.C.	✓		
REP. TRUDI SCHMIDT, V.C.	✓		
REP. TOM DELL	✓		
REP. TOM FACEY	✓		
REP. D.HEMMELBERGER	✓		
REP. MICHELLE LEE	✓		Late 3:42
REP. MARK NOENNIG	✓		
REP. DIANE RICE	✓		
REP. CLARICE SCHRUMPF	✓		
REP. JAMES WHITAKER	✓		
REP. JOHN ESP	✓		
REP. DANIEL FUCHS	✓		
REP. LARRY JENT	✓		
REP. BRAD NEWMAN	✓		
REP. HOLLY RASER	✓		
REP. RICK RIPLEY	✓		
REP. JIM SHOCKLEY	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
HEALTH AND HUMAN SERVICES

DATE 3-14-01

BILL NO. SB 116 SPONSOR(S) Stonington

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	CHUCK HUNTER	COGSWELL BLDG	D.P.H.H.S.
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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Closing by Sponsor: **Sen. Waterman**, this is one of the fastest growing areas of human services. The assisted living and personal care facilities need some structure and this study will allow us to develop a new system for these facilities. ***{Tape : 1; Side : A; Approx. Time Counter : 5.9 - 9.5}***

EXECUTIVE ACTION ON SB 116

Motion: **REP. SCHMIDT** moved that **SB 116 BE CONCURRED IN.**

Discussion: We need to pass this bill out of here, because it is in conflict with SB 170. Then we can begin the work on coordinating instructions that will make these two bills fit together.

Motion: **REP. NEWMAN** moved that **SB 116 BE AMENDED.**

Discussion: **Rep. Newman** explained the amendments. There is concern with the policy being changed on Page 9, lines 12 through 16. It is a good bill but we need to be concerned about the language that calls for an assessment before the investigation. Do we want to establish a policy of assessing the report before it is investigated. Currently, they must investigate first. **EXHIBIT(huh66a01)**

Rep. Shockley: I resist the amendment as it seems like the Dept. is trying to be reasonable. Left the way it is-it says a thorough investigation shall be conducted by a peace officer into the situation and surroundings. The Dept. has limited resources and only have the ability to assess the report. Other agencies have the funds and ability to do an investigation.

Rep. Esp: I resist this amendment.

Rep. Rice: In the hearing they said most of the complaints were from divorces, etc. They soon were able to sort out the complaints and decide if the were legitimate before referring action.

Rep. Noennig: I have an amendment, but will not offer it until we see the results of this amendment. I share the concern of Rep. Newman.

Rep. Brown: I think we should leave it to the Dept. to assess the situation and I will resist this amendment. We need to give the Dept. some latitude.

Rep. Shockley: This does not say they do not have to do anything about meritorious calls and valid complaints.

Rep. Facey: I recommend we pass the amendment and the bill.

Motion/Vote: **REP. NEWMAN** moved that **SB 116 BE AMENDED. Motion failed 5-13 with Dell, Esp, Facey, Lee, and Newman voting aye.**

Motion: **REP. NOENNIG** moved that **SB 116 BE AMENDED.**

Discussion: **Rep. Noennig** moves conceptual amendment. Page 9, line 13 between the word shall and access insert the word promptly. On Page 16 reinsert the word prompt that is currently crossed out.

Motion/Vote: **REP. NOENNIG** moved that **SB 116 BE AMENDED. Motion carried 18-0.**

Motion/Vote: **REP. NEWMAN** moved that **SB 116 BE CONCURRED IN AS AMENDED. Motion carried unanimously.** Rep. Newman to carry on house floor. ***{Tape : 1; Side : A; Approx. Time Counter : 9.5 - 24.8}***

HEARING ON SB 442

Sponsor: Senator Cobb, SD

Proponents: Brad Weber, Boy Scouts
Colleen Murphy, Social Workers Assn.

Opponents: None

Opening Statement by Sponsor: Sen. Cobb: This bill creates revolving loans for low income families. There is no money in this bill unless DPPHS wants to put money in the program. The concept is to allow - page 1, lines 19 through 25, low income families to come to the DPPHS to qualify for a loan. They could use the loans up to $8000.00 for job training expenses or business start up costs. This is intended to by-pass the bureaucratic process and make it simpler. ***{Tape : 1; Side : A; Approx. Time Counter : 24.8 - 30}{Tape : 1; Side : B; Approx. Time Counter : 0 - 1.1}***

Proponents' Testimony: Brad Weber, Boy Scouts, I am in favor of this bill. **EXHIBIT(huh66a03)** ***{Tape : 1; Side : B; Approx. Time Counter : 4.6 - 4.8}***

Colleen Murphy, MT Chapter of Association of Social Workers, I support this bill.***{Tape : 1; Side : B; Approx. Time Counter : 4.8 - 5}***

Opponents' Testimony: None

Exh 1
3/23/01
SB116

Amendments to Senate Bill No. 116
3rd Reading Copy

Requested by Representative Brad Newman

For the House Human Services Committee

Prepared by David Niss
March 23, 2001 (9:50AM)

1. Title, line 8 through line 9.
Strike: "ALLOWING" on line 8 through "REQUIRED;" on line 9

2. Title, line 14.
Strike: "41-3-202,"

3. Page 9, line 11 through page 10, line 28.
Strike: section 5 in its entirety
Renumber: subsequent sections

4. Page 26, line 28.
Strike: "32"
Insert: "31"

5. Page 40, lines 1 and 3.
Strike: "30 THROUGH 32" in two places
Insert: "29 through 31" in two places

- END -

HOUSE OF REPRESENTATIVE

ROLL CALL

HEALTH AND HUMAN SERVICES COMMITTEE

DATE 3/23/01

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL THOMAS, CHAIR	X		
REP. ROY BROWN, V.C.	X		
REP. TRUDI SCHMIDT, V.C.	X		
REP. TOM DELL	X		
REP. TOM FACEY	X		
REP. D.HEMMELBERGER	X		
REP. MICHELLE LEE	X		
REP. MARK NOENNIG	X		
REP. DIANE RICE	X		
REP. CLARICE SCHRUMPF	X		
REP. JAMES WHITAKER	X		
REP. JOHN ESP	X		
REP. DANIEL FUCHS			X
REP. LARRY JENT	X		
REP. BRAD NEWMAN	X		
REP. HOLLY RASER	X		
REP. RICK RIPLEY	X		
REP. JIM SHOCKLEY	X		
McGee	X		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HEALTH AND HUMAN SERVICES_COMMITTEE

DATE 3/23/01 Bill NO. SB 116 NUMBER

MOTION: New sec Amendment 5-13

Name	AYE	NO
REP. BILL THOMAS, CHAIRMAN		X
REP. ROY BROWN, V C MAJORITY		X
REP. TRUDI SCHMIDT, V C MINORITY		X
REP. TOM DELL	X	
REP. TOM FACEY	X	
REP. DENNIS HIMMELBERGER		X
REP. MICHELLE LEE	X	
REP. CLARICE SCHRUMPF		X
REP. JAMES WHITAKER		X
REP. JOHN ESP	X	
REP. DANIEL FUCHS		X
REP. LARRY JENT		X
REP. HOLLY RASER		X
REP. BRAD NEWMAN	X	
REP. MARK NOENNIG		X
REP. RICK RIPLEY		X
REP. DIANE RICE		X
REP. JIM SHOCKLEY		X

HOUSE STANDING COMMITTEE REPORT

March 26, 2001

Mr. Speaker:

We, your committee on **Human Services** recommend that **Senate Bill 116** (third reading copy – blue) **be concurred in as amended**.

Signed: Bill Thomas, Chr.
Representative Bill Thomas, Chair

To be carried by Representative Mark Noennig

And, that such amendments read:

1. Page 9, line 13.
Following: "shall"
Insert: "promptly"

2. Page 9, line 16.
Following: "~~promptly~~"
Insert: "promptly"

- END -

Committee Vote:
Yes 18, No 0.

3/26 2 pm

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